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FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

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SENSITIVE

MUR: 6563

DATE COMPLAINT FILED: April 30, 2012

DATE OF NOTIFICATION: May 3, 2012

DATE OF LAST RESPONSE: June 11, 2013

DATE ACTIVATED: July 24, 2012

ELECTION CYCLE: 2012

EXPIRATION OF SOL: March 8, 2017

to March 16, 2017

MUR: 6733

DATE COMPLAINT FILED: May 1, 2013

DATE OF NOTIFICATION: May 8, 2013

DATE OF LAST RESPONSE: June 28, 2013

DATE ACTIVATED: August 13, 2013

ELECTION CYCLE: 2012

EXPIRATION OF SOL: March 8, 2017

to March 16, 2017

COMPLAINANTS:

Campaign Legal Center (MUR 6563)

Democracy 21 (MUR 6563)

Eva Jehle (MUR 6733)

RESPONDENTS:

Representative Aaron Schock (MURs 6563 and 6733)

Representative Eric Cantor (MURs 6563 and 6733)

Every Republican Is Crucial (ERICPAC)

and Melinda Fowler Allen in her official capacity

as treasurer (MURs 6563 and 6733)

Campaign for Primary Accountability Inc.

and Jonathan Martin in his official capacity

as treasurer (MURs 6563 and 6733)

Representative Rodney Davis (MUR 6733)

18th District Republican Central Committee (Federal

Account) and Paul Kilgore in his official capacity

as treasurer (MUR 6733)

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 441a(a)

2 U.S.C. § 441a(f)

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2 U.S.C. § 441i(e)
11 C.F.R. § 300.2(b)
11 C.F.R. § 300.2(m)
11 C.F.R. § 300.2(n)
11 C.F.R. § 300.60
11 C.F.R. § 300.61

INTERNAL REPORTS CHECKED: Disclosure Reports

OTHER AGENCIES CHECKED:

I. INTRODUCTION

The Complaints in MURs 6563 and 6733 allege that Representative Aaron Schock (18th District, Illinois) solicited three contributions to an independent-expenditure-only political committee, Campaign for Primary Accountability Inc. ("CPA"), in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").

The Complaint in MUR 6563 alleges that Schock solicited a \$25,000 contribution from Representative Eric Cantor (7th District, Virginia) in violation of 2 U.S.C. §§ 441i(e) and 441a(a). That Complaint recites Schock's reported description of a conversation with Cantor in terms that suggest a potential violation: "I said, 'Look, I'm going to do \$25,000 [specifically] for the Kinzinger campaign for the television campaign' and said, 'Can you match that?' And he said, 'Absolutely.'"¹ Cantor's leadership PAC, Every Republican Is Crucial (ERICPAC), subsequently made a \$25,000 contribution to CPA, which was supporting Representative Kinzinger in a primary election in the Illinois 16th Congressional District. The Complaint contends that Schock's solicitation of Cantor exceeded the limits imposed under Sections 441i(e) and 441a(a), relying on the Commission's conclusion in Advisory Op. 2011-12 (Majority PAC)

¹ See John Stanton, *Eric Cantor Gave \$25K to Anti-Incumbent PAC to Aid Adam Kinzinger*, ROLL CALL, Apr. 6, 2012, available at http://www.rollcall.com/news/Eric_Cantor_Gave_Money_to_Super_PAC_to_Aid_Adam_Kinzinger-213651-1.html [hereinafter Stanton, *Cantor Gave \$25K*]; Compl. at 2 n.1, MUR 6563 (Apr. 30, 2012).

1 that those Sections prohibit a federal officeholder from soliciting contributions from individuals
2 or federal political action committees to an independent-expenditure-only committee such as
3 CPA in excess of \$5,000.

4 The Complaint in MUR 6733 makes allegations based on an investigative report that the
5 Office of Congressional Ethics ("OCE" and the "OCE Report") submitted to the House of
6 Representatives Committee on Ethics ("House Ethics").² According to the OCE Report, OCE
7 investigated Schock's alleged "solicit[ation of] contributions for an independent expenditure-
8 only political committee in excess of \$5,000 per donor, in violation of federal law, House rules,
9 and standards of conduct."³ The Complaint in MUR 6733 alleges that Schock impermissibly
10 solicited a \$25,000 contribution from Cantor, but also alleges that Schock impermissibly
11 solicited, and his campaign staff impermissibly directed, a \$25,000 contribution to CPA from the
12 18th District Republican Central Committee (Federal Account) ("18th District Committee"), a
13 local party committee in Schock's congressional district. In addition, the MUR 6733 Complaint

² See Compl. at 2, Attach. A, MUR 6733 (May 1, 2013); OCE Review No. 12-9525, adopted Aug. 24, 2012, available at <http://ethics.house.gov/sites/ethics.house.gov/files/OCE%20Report%20Rep.%20Schock.pdf>. On February 6, 2013, OCE publicly released its report that it referred to House Ethics on August 30, 2012. See FEBRUARY 6, 2013—OCE REFERRAL REGARDING REP. AARON SCHOCK, available at <http://oce.house.gov/2013/02/february-6-2013---oce-referral-regarding-rep-aaron-schock.html>.

³ See OCE Report at 1. OCE's investigation included interviews and review of documents obtained from Schock, Cantor, CPA personnel, David Herro, Anne Dias Griffin, and other persons. The OCE Report refers to Cantor as "Representative 1" and Herro and Griffin as "Donor 1" and "Donor 2," respectively. See *id.* at 4 n.1, 5. Rodney Davis and 18th District Committee personnel did not cooperate with the OCE investigation. See *id.* at 21. On the basis of its investigation, OCE found that Schock solicited Cantor to contribute \$25,000 to CPA and found "substantial reason to believe" that Schock's campaign committee solicited the 18th District Committee to contribute \$25,000 to CPA, and recommended that House Ethics further review the allegation. *Id.* at 21. According to a House Ethics press release from February 6, 2013, House Ethics will "gather additional information necessary to complete its review." STATEMENT OF THE CHAIRMAN AND RANKING MEMBER OF THE COMMITTEE ON ETHICS REGARDING REPRESENTATIVE AARON SCHOCK (Feb. 6, 2013), available at <http://ethics.house.gov/press-release/statement-chairman-and-ranking-member-committee-ethics-regarding-representative-aaro-0>. House Ethics also noted that "the mere fact of conducting further review of a referral . . . does not itself indicate that any violation has occurred, or reflect any judgment on behalf of the Committee." *Id.*; see also OCE Report at 3 ("The [OCE] Board notes that these findings do not constitute a determination that a violation actually occurred."). To date, publicly available information does not indicate the status of House Ethics's review of the OCE Report.

1 further alleges that Schock impermissibly solicited a \$35,000 contribution to CPA from David
2 Herro. Finally, the MUR 6733 Complaint claims that Representative Rodney Davis (13th
3 District, Illinois), at the time a congressional staffer,⁴ impermissibly participated in the
4 solicitation, direction, and receipt of these same contributions as well as a \$30,000 contribution
5 from Anne Dias Griffin to CPA.

6 Schock contends in his Responses to the Complaints that none of the three alleged
7 solicitations resulted in a violation of the Act. First, he asserts that his communication to Cantor
8 was not a solicitation under the Commission's regulations,⁵ and that in any event the
9 Commission should not construe Section 441i(e) to apply to the communication at issue here
10 because it was from one Member of Congress to another Member.⁶ Second, Schock denies that
11 he solicited or that he or his campaign staff directed the 18th District Committee's contribution
12 to CPA.⁷ Finally, Schock acknowledges that he "reached out to David Herro" and "discussed
13 with Mr. Herro the need for funds to support Mr. Kinzinger's efforts," but asserts that he "did not
14 mention any dollar amounts," and that such a conversation does not fall within the restrictions of
15 Section 441i(e).⁸

⁴ The Complaint in MUR 6733 identifies Davis as Chief of Staff for Representative John Shimkus (15th District, Illinois).

⁵ Schock Resp. at 1, 4-5 (June 22, 2012), MUR 6563 ("Schock MUR 6563 Resp."); Schock Resp. at 1, 4-6 (June 28, 2013), MUR 6733 ("Schock MUR 6733 Resp."). See 11 C.F.R. § 300.2(m) (definition of "to solicit").

⁶ Schock MUR 6563 Resp. at 5-7; Schock MUR 6733 Resp. at 6-7.

⁷ Schock MUR 6563 Supp. Resp. at 1 (Oct. 31, 2012); Schock MUR 6733 Resp. at 1, 8; see 11 C.F.R. § 300.2(n) (definition of "to direct").

⁸ Schock MUR 6733 Resp. at 3, 7. Schock also responded to OCE and to House Ethics, denying any violation and making the same arguments he has presented to the Commission in MURs 6563 and 6733. See Letter from Robert K. Kelner, Counsel, to Deborah Mayer, House Committee on Ethics (Dec. 6, 2012) ("Schock Letter to House Ethics"), available at <http://ethics.house.gov/sites/ethics.house.gov/files/Rep.%20Schock%20Response.pdf>; Letter from Robert K. Kelner to Kedric Payne, OCE (July 17, 2012) ("Schock Letter to OCE"), available at <http://ethics.house.gov/sites/ethics.house.gov/files/Rep.%20Schock%20Response.pdf>.

1 ERICPAC and Cantor respond that the Complaints do not contain any allegation of
2 wrongdoing by them, that Cantor did not solicit any improper contributions, and that because all
3 of ERICPAC's funds comply with the limitations, prohibitions, and reporting requirements of the
4 Act, it made a lawful donation to CPA.⁹ ERICPAC further asserts that it properly disclosed its
5 contribution to CPA in its report filed with the FEC.¹⁰ Consequently, ERICPAC and Cantor
6 state that they should be dismissed as Respondents in these MURs.¹¹

7 Rodney Davis responds that the Complaint does not contain any factual allegations that
8 he solicited or directed any contributions in violation of the Act, and that the Commission should
9 dismiss the Complaint against him.¹² The 18th District Committee responds that it made the
10 decision to make a permissible \$25,000 contribution to CPA, and that the Commission should
11 dismiss the Complaint and find no reason to believe the Committee violated the Act.¹³ Finally,
12 CPA responds that the Complaints do not allege any violations on its part, that CPA received
13 lawful contributions, and that the Commission should take no further action against CPA and
14 summarily dismiss it as a Respondent in this matter.¹⁴

15 Based on the available information, we recommend that the Commission find reason to
16 believe that Schock impermissibly solicited contributions in violation of 2 U.S.C. § 441i(e). We

⁹ ERICPAC Resp. at 1-6 (June 12, 2012), MUR 6563; Cantor Resp. at 1-2 (June 11, 2013), MUR 6563; ERICPAC and Cantor Resp. at 1-5 (June 17, 2013), MUR 6733.

¹⁰ ERICPAC Resp. at 4, MUR 6563; ERICPAC and Cantor Resp. at 5, MUR 6733.

¹¹ ERICPAC Resp. at 4, 6, MUR 6563; Cantor Resp. at 1-3, MUR 6563; ERICPAC and Cantor Resp. at 3-4, MUR 6733.

¹² Davis Resp. at 1-2, 4 (June 27, 2013), MUR 6733.

¹³ 18th District Committee Resp. at 1 (June 27, 2013), MUR 6733.

¹⁴ CPA Resp. at 1-2 (May 22, 2012), MUR 6563; CPA Resp. at 1-2 (May 30, 2013), MUR 6733.

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1 further recommend that the Commission find no reason to believe that Davis violated 2 U.S.C.
2 § 441i(e), and find no reason to believe that Schock, ERICPAC, Cantor, or the 18th District
3 Committee made, or that CPA received, an excessive contribution. *See* 2 U.S.C. §§ 441a(a),
4 441a(f). We also recommend that the Commission enter into pre-probable cause conciliation
5 with Schock.

6 II. FACTUAL AND LEGAL ANALYSIS

7 A. Factual Summary

8 Representatives Adam Kinzinger and Don Manzullo were candidates in the Illinois 16th
9 Congressional District primary election held on March 20, 2012. Schock states that he supported
10 Kinzinger and sought to assist him.¹⁵ Schock further states that he learned that CPA was
11 broadcasting advertisements opposing Manzullo and “believed that CPA needed additional funds
12 to be able to air the advertisements again prior to the election.”¹⁶ Schock’s first-person
13 description of relevant events was quoted in a press article cited in the MUR 6563 Complaint:

14 “The final week of the campaign, it got very tight, it was neck and neck. I
15 was trying to do everything I could to help the Kinzinger campaign and
16 reached out to the committee that was running ads in support of them.”
17

18 “They were basically running the television ads for him, [and] I asked if I
19 could specify a donation to them,” to be used only in the Illinois primary.
20

21 “And they said I could.”¹⁷

¹⁵ *See* Schock MUR 6563 Resp. at 2. Schock’s responses to the Commission are unsworn. His statements to OCE are also unsworn; according to OCE, he refused to sign a written acknowledgment of the warning that his OCE interview statements were subject to the False Statements Act, *see* 18 U.S.C. § 1001. *See* OCE Mem. of Interview of Schock ¶¶ 1-2, OCE Report, Ex. 9 at 12-9525_0089 (“Schock MOI”).

¹⁶ Schock MUR 6563 Resp. at 2.

¹⁷ Stanton, *Cantor Gave \$25K*, *supra* (alteration in original). The article also noted that Schock stated that he discussed the legality of the contribution with the National Republican Congressional Committee, but a Schock spokesman reportedly later clarified that Schock misspoke and that the contributions were not vetted with the NRCC but rather with attorneys specializing in campaign finance law. *Id.*

1 According to Schock, he spoke to Davis around March 2012, but does not remember
2 Davis asking him to contribute to CPA.¹⁸ CPA personnel state that Davis was the contact person
3 for the following contributions that CPA received for the Kinzinger race.¹⁹

Contributor	Amount	Date Received ²⁰
David Herro Trust	\$35,000.00	March 14, 2012
ERICPAC	\$25,000.00	March 15, 2012
18th District Committee	\$25,000.00	March 16, 2012
Anne Dias Griffin	\$30,000.00	March 16, 2012
American College of Radiology Assn PAC	\$5,000.00	March 22, 2012 ²¹
TOTAL	\$120,000.00	

4
5 CPA Managing Director Jamie Story states that in March 2012, CPA Co-Chairman Eric
6 O'Keefe told her to call Davis because he knew of individuals who would contribute to CPA's
7 efforts in Kinzinger's election.²² Story further states that she provided Davis with wiring
8 instructions for contributions and that she did not ask Davis for contributions or a specific

¹⁸ See Schock MOI ¶¶ 8, 10.

¹⁹ See OCE Mem. of Interview of CPA Managing Director (Jamie Story) ¶ 12, OCE Report Ex. 4 at 12-9525_0021 ("Story MOI"); OCE Mem. of Interview of CPA Development Coordinator (Hannah Christian) ¶ 26, OCE Report Ex. 6 at 12-9525_0028 ("Christian MOI"). The OCE Report usually refers to CPA's Managing Director and Development Coordinator by their positions rather than their names, but they are identified in each other's interviews. See Story MOI ¶¶ 2, 6; Christian MOI ¶¶ 2, 6.

²⁰ See CPA 2012 Amended April Monthly Report at 6, 8-10 (July 23, 2012).

²¹ The OCE Report contains information about this contribution but we do not otherwise address it in this First General Counsel's Report, as it is not the subject of any allegations in the Complaints and does not otherwise appear to be the subject of any violations of the Act. See OCE Mem. of Interview of Lobbyist Donor 1 (Ted Burnes), OCE Report Ex. 21 at 12-9525_0133 ("Burnes MOI").

²² See Story MOI ¶¶ 5, 12.

1 amount of money.²³ CPA Development Coordinator Hannah Christian states that to her
2 knowledge no one from CPA requested the contributions from these individuals and entities.²⁴
3 Christian also states that she contacted Davis to get the complete contact information for these
4 donors who made contributions by wire transfer and was supposed to let Davis know when CPA
5 received the wire transfer and when CPA made the media buys.²⁵ Story says that Davis wanted
6 confirmation that CPA spent \$100,000 on Kinzinger's race.²⁶ In an e-mail to Story on March 16,
7 2012, Davis, using his "volunteersforshimkus.org" address, asked for confirmation that CPA
8 spent "at least \$100,000 . . . on Rockford [Illinois] TV and any cable outlets you have added."²⁷

9 CPA aired and distributed independent expenditure advertisements opposing Manzullo
10 totaling \$239,531.68, all during the period March 8-19, 2012. The only expenditures for
11 television advertising — in the amounts of \$15,000, \$25,000, and \$35,000 respectively — all
12 occurred on March 16 or 17, 2012, after or on the same day as the contributions at issue in this
13

²³ *Id.* ¶¶ 12-13.

²⁴ *See* Christian MOI ¶ 26.

²⁵ *Id.* ¶ 25.

²⁶ *See* Story MOI ¶ 18.

²⁷ E-mail from Rodney Davis to Jamie Story (Mar. 16, 2012 02:27 PM CDT), OCE Report Ex. 5 at 12-9525_024 ("Davis E-mail to Story"). The e-mail reads "Jamie, the \$25k echeck yesterday was rescinded, and the money was wired today from the 18th Congressional District PAC. That puts you at \$90,000 already wired. \$10,000 more may have been wired today from Canning, but I am not sure there. Have John get me a copy of the buy that shows at least \$100,000 being spent on Rockford TV and any cable outlets you have added. Thx." *Id.* CPA did not disclose the receipt of a contribution from "Canning," and Story says she did not have any knowledge of such an individual. *See* Story MOI ¶ 17. "John" appears to refer to CPA's "head Republican strategist" referenced in an e-mail from Story to Davis. E-mail from Jamie Story to Rodney Davis (Mar. 14, 2012 01:20 PM CDT), OCE Report Ex. 14 at 12-9525_0115.

1 matter.²⁸ CPA's television advertisement is described in an e-mail from Rob Collins, Cantor's
2 former Chief of Staff, as "the ad that Shimkus, Schock and Cantor have sent money in to support
3 that the Campaign for Primary Accountability is running."²⁹

4 The available information suggests that the contributions from the 18th District
5 Committee, ERICPAC, and Herro were made to CPA at Schock's request. As to the first of
6 these contributions, the available information indicates that Schock's Campaign Director, Tania
7 Hoerr, made the contribution on the 18th District Committee account at the direction of Schock's
8 Chief of Staff, Steve Shearer.³⁰ Hoerr says that she:

- 9 • had the necessary banking information to make the online contribution because she
10 established the 18th District Committee account and routinely deposits money into its
11 account from Schock's joint fundraising committee, Schock Victory Committee
12 ("Victory Committee");³¹
13
- 14 • did not recall needing to get approval from anyone other than Shearer in order to make
15 the contribution, and did not recall speaking to 18th District Committee Chairman Mike
16 Bigger prior to making the contribution;³²
17

²⁸ See CPA 2012 Amended April Monthly Report at 38; CPA 24/48 Hour Notice of Independent Expenditures (Mar. 19, 2012). CPA also disclosed an \$18,000 independent expenditure on the same date, March 17, 2012, to the same vendor for a radio advertisement, the only radio communication among CPA's independent expenditures opposing Manzullo. See *id.* at 39.

²⁹ E-mail from Rob Collins to Ted Burnes (Mar. 15, 2012 10:24 AM), OCE Report Ex. 23 at 12-9525_0140. Rob Collins is a partner with the political strategy firm Purple Strategies LLC, and Ted Burnes is Director of American College of Radiology PAC and Political Education. See OCE Report at 10; Burnes MOI ¶¶ 2, 12.

³⁰ See OCE Mem. of Interview of Tania Hoerr ¶¶ 3, 10, OCE Report Ex. 11 at 12-9525_0100 ("Hoerr MOI"). The OCE Report generally refers to Hoerr and Shearer by position rather than name, but they are identified in the Memoranda of Interviews of other witnesses. See, e.g., Christian MOI ¶ 19; Hoerr MOI ¶ 6. Hoerr is Schock's sister. See OCE Report at 15 n.62.

³¹ See Hoerr MOI ¶ 12. The Victory Committee amended its Statement of Organization on March 9, 2011, to add the 18th District Committee as a participating committee along with Schock for Congress (Schock's principal campaign committee), GOP Generation Y Fund (Schock's leadership PAC), and the National Republican Congressional Committee.

³² *Id.* ¶ 13.

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- 1 • was not sure why Bigger did not make the contribution online himself;³³
- 2
- 3 • did not speak to Schock at that time about the contribution and did not recall if Shearer
- 4 told her if anyone requested that the contribution be made;³⁴ and
- 5
- 6 • learned from CPA that it would take a significant amount of time to process the online
- 7 contribution she made, and that Shearer contacted Bigger for him to make the
- 8 contribution from the 18th District Committee via a wire transfer.³⁵
- 9

10 The online contribution was duly rescinded and replaced by a wire transfer from the 18th
11 District Committee.³⁶ Davis informed CPA of the replacement by e-mail.³⁷ Shearer says that
12 Bigger contacted him to ask for the wire transfer information after Bigger and Schock had a
13 conversation about eight or nine days prior to the Kinzinger primary election.³⁸

14 Schock contends that shortly before the March 20 primary election, he "learned that the
15 18th District Republican Central Committee . . . was planning to make a \$25,000 donation to
16 CPA from its federal account."³⁹ Schock says that his "campaign staff made initial technical
17 attempts to assist the 18th District Committee in making the Committee's contribution," but that
18 neither he nor his staff directed the Committee's contribution to CPA.⁴⁰ Schock also asserts that

³³ *Id.* ¶ 15.

³⁴ *Id.* ¶ 14.

³⁵ *Id.* ¶¶ 16-19. According to Story, Davis put her in contact with someone at the 18th District Committee who wired the contribution to CPA. *See* Story MOI ¶ 15.

³⁶ *See* Hoerr MOI ¶ 19; Story MOI ¶¶ 14-15.

³⁷ *See* Davis E-mail to Story, *supra*.

³⁸ OCE Mem. of Interview of Steve Shearer ¶ 18, OCE Report Ex. 12 at 12-9525_0106 ("Shearer MOI").

³⁹ Schock MUR 6563 Resp. at 2. Schock's Response did not further explain what he meant when he stated that he "learned" of the 18th District Committee's plan to contribute to CPA. *See id.* We offered Schock through counsel the opportunity to clarify his statement, if he wished to do so. *See* Letter from Mark Allen, FEC, to Robert K. Kelner, Counsel, Rep. Schock (Oct. 18, 2012). Schock chose to provide an additional response. *See* Schock MUR 6563 Supp. Resp.

⁴⁰ *See* Schock MUR 6733 Resp. at 2, 8.

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1 he did not solicit the 18th District Committee's contribution to CPA,⁴¹ and he told OCE that he
2 has never requested that the 18th District Committee contribute to any political campaigns.⁴²
3 Rather, Schock says that Bigger told him that Bigger intended to make a donation to CPA from
4 the 18th District Committee.⁴³ Schock also states that although he did not solicit Bigger to make
5 the donation using 18th District Committee funds, he was pleased to hear that Bigger would be
6 doing so and he did not object.⁴⁴ The 18th District Committee itself says that it made the
7 decision to make the \$25,000 contribution to CPA, but is silent as to how the contribution
8 arose.⁴⁵

9 Schock says that he assisted with establishing the 18th District Committee's federal
10 account and that he "helps raise funds for" the 18th District Committee's federal account through
11 his Victory Committee,⁴⁶ but does not hold any positions on the 18th District Committee and
12 does not have the authority to make decisions concerning how it spends its funds.⁴⁷

⁴¹ See Schock MUR 6563 Supp. Resp. at 1.

⁴² Schock MOI ¶ 15.

⁴³ See Schock MUR 6563 Supp. Resp. at 1; *see also* Schock Letter to House Ethics at 3; Schock Letter to OCE at 4. Schock told OCE that he learned approximately ten days before Kinzinger's primary election in March 2012 that the 18th District Committee contributed to CPA and that Bigger told him about the contribution. Schock MOI ¶¶ 19-20. Schock's Chief of Staff told OCE that Bigger wanted to make a contribution to CPA from the 18th District Committee account and that Schock did not ask Bigger to contribute. Shearer MOI ¶¶ 20-21. Counsel for Schock contends that Bigger corroborated this account in a letter to House Ethics. Schock Letter to House Ethics at 3. According to OCE, Bigger's counsel submitted a letter to OCE "suggesting that Mr. Bigger decided to contribute \$25,000 from [the] 18th District Republican Central Committee to CPA and then informed Representative Schock of the decision." OCE Report at 16 n.68. OCE refused to consider this letter as evidence, *see id.*, and Bigger did not cooperate with the OCE investigation. *See id.* at 5-6, 16, 20-21.

⁴⁴ See Schock MUR 6563 Supp. Resp. at 1-2.

⁴⁵ 18th District Committee Resp. at 1, MUR 6733.

⁴⁶ See Schock MOI ¶ 14; Schock MUR 6563 Resp. at 2.

⁴⁷ See Schock MUR 6563 Resp. at 2. The 18th District Committee filed its initial Statement of Organization with the Commission on February 25, 2011, and through March 31, 2012, disclosed total receipts of \$132,061.20, all but \$6.00 of which consisted of transfers from the Victory Committee. Prior to its \$25,000 contribution to CPA, the

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1 According to Schock, "[w]ith knowledge of the \$25,000 commitment from the 18th
2 District Committee, [he] reached out to Rep. Cantor to see if Rep. Cantor could raise additional
3 funds to support pro-Kinzinger ads by CPA."⁴⁸ Schock was quoted in the press as stating to
4 Cantor: "I said, 'Look, I'm going to do \$25,000 [specifically] for the Kinzinger campaign for
5 the television campaign' and said, 'Can you match that?'" "And he said, 'Absolutely.'"⁴⁹ In his
6 response, Schock acknowledges that he "said something along the lines of" this reported
7 statement.⁵⁰ Schock told OCE that he believed he said something like "We're doing \$25,000[;]
8 would you be able to do \$25,000[?]," that "We're doing \$25,000" referred to the 18th District
9 Committee's \$25,000 contribution to CPA, and that he referred to it as "we" because it was a
10 donation being made within his district.⁵¹

11 ERICPAC contributed \$25,000 to CPA on March 16, 2012.⁵² Cantor's campaign
12 spokesman reportedly stated that Cantor made the donation at the request of Schock; his
13 description of the exchange was quoted in a news article as follows: "On Thursday, March 15,
14 2012, Leader Cantor was asked by Congressman Schock to contribute to an organization that
15 was supporting Adam Kinzinger in the Illinois election of March 20. ERICPAC subsequently

18th District Committee had made no contributions to other federal committees and had disbursed to state candidates a total of \$7,500. *See* 18th Dist. Comm. 2012 April Quarterly Report at 4, 9 (Apr. 13, 2012) (disclosing one \$500 contribution to a state committee); 18th Dist. Comm. 2011 April Quarterly Report at 4, 9-11 (Apr. 7, 2011) (disclosing \$7,000 in contributions to state committees).

⁴⁸ Schock MUR 6563 Resp. at 2.

⁴⁹ *See* Stanton, *Cantor Gave \$25K*, *supra*. The bracketed term "[specifically]" appears in Schock's quote in the article. The article incorrectly reported that Schock's leadership PAC, GOP Generation Y Fund, contributed \$25,000 to CPA.

⁵⁰ Schock MUR 6563 Resp. at 2.

⁵¹ Schock MOI ¶¶ 23-24.

⁵² ERICPAC 2012 April Monthly Report at 74 (Apr. 20, 2012).

1 made a contribution with the understanding that those funds would be used only in the effort to
2 support Congressman Kinzinger.⁵³

3 In addition to the ERICPAC and 18th District Committee \$25,000 contributions to CPA,
4 Schock was also involved in David Herro's \$35,000 contribution to CPA. Herro has organized
5 fundraisers for Schock, including during March 2012, the same month as Schock's contact with
6 Herro regarding a contribution to CPA.⁵⁴ Herro also contributed \$15,000 to Schock's Victory
7 Committee in 2010 and \$10,000 to the Committee in 2011.⁵⁵ Schock says that he contacted
8 Herro in March 2012 about contributing to CPA.⁵⁶ Schock and Herro each say that Schock
9 contacted Herro and told him that Kinzinger's election was close and asked Herro if he could
10 help but did not suggest any amount.⁵⁷ Herro told Schock that he would help and that he would
11 attempt to have others help.⁵⁸ Herro contributed \$35,000 to CPA on March 14, 2012, after
12 receiving information regarding CPA from Shearer, Schock's Chief of Staff,⁵⁹ and from CPA,

⁵³ Stanton, *Cantor Gave \$25K*, *supra*. Cantor described Schock's request in similar terms: Schock called Cantor and asked whether he would give \$25,000 to a super PAC operating in Illinois in connection with Kinzinger's race. See OCE Mem. of Interview of Cantor ¶ 8, OCE Report Ex. 8 at 12-9525_0087 ("Cantor MOI").

⁵⁴ See OCE Mem. of Interview of David Herro ¶¶ 4, 6, 9-13, OCE Report Ex. 18 at 12-9525_0124 ("Herro MOI").

⁵⁵ See Victory Committee 2010 July Quarterly Report at 6; 2011 October Quarterly Report at 29.

⁵⁶ See Schock MOI ¶ 28.

⁵⁷ *Id.* ¶¶ 29-30; Schock MUR 6733 Resp. at 3, 7; Herro MOI ¶¶ 9, 11. Schock also denies that his staff suggested, requested, or recommended any contribution amounts. See Schock Letter to OCE at 5.

⁵⁸ See Herro MOI ¶ 10; Schock MOI ¶¶ 30-31.

⁵⁹ Shearer says that he provided CPA's wire transfer information to Herro at Schock's request. See Shearer MOI ¶¶ 23, 25-26.

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1 including that CPA wanted to raise \$100,000 in three days.⁶⁰ Herro says he solicited three
2 individuals to contribute to CPA, one of whom, Anne Dias Griffin, contributed \$30,000 to CPA
3 on March 16, 2012.⁶¹ Griffin acknowledges that Herro told her that he was contributing \$35,000
4 to CPA to support Kinzinger in his primary election.⁶² Griffin and Schock each say that Schock
5 did not ask Griffin to contribute.⁶³ Griffin and Herro each say they did not discuss their
6 contributions with Davis.⁶⁴

7 **B. Legal Analysis**

8 **1. Applicable Law**

9 The Act and Commission regulations prohibit federal candidates, federal officeholders,
10 agents acting on their behalf, and entities that are directly or indirectly established, financed,
11 maintained, controlled by, or acting on behalf of federal candidates or officeholders from
12 soliciting, receiving, directing, transferring, spending, or disbursing funds in connection with an
13 election for federal office, unless the funds are subject to the limitations, prohibitions, and
14 reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. §§ 300.60, 300.61.⁶⁵
15 Commission regulations define "to solicit" to mean:

⁶⁰ See Herro MOI ¶¶ 12-16. The David Herro Trust (the "Trust") made the \$35,000 contribution to CPA. See CPA 2012 Amended April Monthly Report at 8. Herro explained that the Trust is his bank account and he is the sole member of the Trust. See Herro MOI ¶ 18.

⁶¹ See *id.* ¶ 17; OCE Mem. of Interview of Anne Dias Griffin ¶¶ 7-8, OCE Report Ex. 20, 12-9525_0131 ("Griffin MOI"); CPA 2012 Amended April Monthly Report at 10.

⁶² See Griffin MOI ¶¶ 8-9.

⁶³ See *id.* ¶ 10; Schock MOI ¶ 32.

⁶⁴ See Griffin MOI ¶ 10; Herro MOI ¶ 19.

⁶⁵ Agents of federal candidates and officeholders are prohibited from engaging in these activities when "acting on behalf of a Federal candidate or individual holding Federal office." 11 C.F.R. § 300.60(c). The Commission has defined an "agent" of a federal candidate or officeholder to be "any person who has actual

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1 to ask, request, or recommend, explicitly or implicitly, that another person
2 make a contribution, donation, transfer of funds, or otherwise provide
3 anything of value. A solicitation is an oral or written communication that,
4 construed as reasonably understood in the context in which it is made,
5 contains a clear message asking, requesting, or recommending that another
6 person make a contribution, donation, transfer of funds, or otherwise
7 provide anything of value. A solicitation may be made directly or
8 indirectly. The context includes the conduct of persons involved in the
9 communication. A solicitation does not include mere statements of
10 political support or mere guidance as to the applicability of a particular
11 law or regulation.

12
13 11 C.F.R. § 300.2(m). Commission regulations provide specific examples of solicitations as well
14 as statements that do not constitute solicitations. *Id.* § 300.2(m)(1)-(3). Commission regulations
15 define "to direct" to mean:

16 to guide, directly or indirectly, a person who has expressed an intent to
17 make a contribution, donation, transfer of funds, or otherwise provide
18 anything of value, by identifying a candidate, political committee or
19 organization, for the receipt of such funds, or things of value. The
20 contribution, donation, transfer, or thing of value may be made or
21 provided directly or through a conduit or intermediary. Direction does not
22 include merely providing information or guidance as to the applicability of
23 a particular law or regulation

24
25 11 C.F.R. § 300.2(n).

26 The Act limits contributions to non-authorized, non-party committees to \$5,000 in any
27 calendar year. 2 U.S.C. § 441a(a)(1)(C). The Act also prohibits any candidate or political
28 committee from knowingly accepting any contribution in violation of section 441a. *Id.*
29 § 441a(f).

authority, either express or implied," "to solicit, receive, direct, transfer, or spend funds in connection with any
election." *Id.* § 300.2(b)(3).

1 Following the decisions in *Citizens United v. FEC*,⁶⁶ and *SpeechNow.org v. FEC*,⁶⁷ the
2 Commission concluded in Advisory Op. 2010-11 (Commonsense Ten) that individuals, political
3 committees, corporations, and labor organizations may make unlimited contributions to
4 independent expenditure-only political committees and that such committees may solicit
5 unlimited contributions from such persons. Thus, committees such as CPA that have registered
6 with the Commission may accept unlimited contributions from individuals, political committees,
7 corporations, and labor organizations.⁶⁸

8 Section 441i was upheld by the Supreme Court in *McConnell v. FEC*,⁶⁹ and was not
9 disturbed by either *Citizens United* or *SpeechNow*. Accordingly, in Advisory Op. 2011-12
10 (Majority PAC), the Commission clarified that the solicitation restrictions under section 441i(e)
11 remain applicable to contributions solicited by federal candidates, officeholders, and other
12 covered persons after *Citizens United* and *SpeechNow.org*.⁷⁰ Therefore, as set forth in
13 Section 441i(e), such persons may solicit for independent expenditure-only political committees
14 only contributions of \$5,000 or less.

⁶⁶ 558 U.S. 310 (2010).

⁶⁷ 599 F.3d 686 (D.C. Cir. 2010).

⁶⁸ See Letter from Jonathan Martin, CPA Treasurer, to FEC (Sept. 27, 2011) (notifying the Commission that CPA intends to make independent expenditures and will not use its funds to make contributions), *available at* <http://docquery.fec.gov/pdf/262/11030664262/11030664262.pdf>.

⁶⁹ 540 U.S. 93, 181-184 (2003).

⁷⁰ Advisory Op. 2011-12 at 4. *Cf.* Advisory Op. 2012-34 (Freedom PAC) (concluding that a principal campaign committee of a federal candidate may use campaign funds to make a contribution of \$10,000 or more to an independent-expenditure-only political committee).

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2. There Is Reason to Believe Rep. Schock Solicited Contributions in Violation of Section 441i(e)

a. ERICPAC \$25,000 Contribution to CPA

A press article reports that Schock described his conversation with Cantor concerning a possible contribution to CPA as follows: "I said, 'Look, I'm going to do \$25,000 [specifically] for the Kinzinger campaign for the television campaign' and said, 'Can you match that?' And he said, 'Absolutely.'"⁷¹ The MUR 6563 and MUR 6733 Complaints allege that Schock thus impermissibly solicited \$25,000 from Cantor.⁷² Schock, in his Response, recognizes the Commission's conclusion in AO 2011-12 (Majority PAC) that federal officeholders remain subject to section 441i(e)'s prohibition on soliciting contributions outside the limitations and prohibitions of the Act, but asks that the Commission decide this matter on the "narrow ground" that his communication to Cantor was not a solicitation.⁷³ Schock's own description of events, however, indicates that he solicited a contribution from Cantor: "Rep. Schock reached out to Rep. Cantor to see if Rep. Cantor could raise additional funds to support pro-Kinzinger ads by CPA."⁷⁴ The act of reaching out to someone to see if they can raise funds satisfies the definition of "solicitation": Schock "ask[ed], request[ed], or recommend[ed]" that Cantor "make a contribution, donation, transfer of funds. . . ." See 11 C.F.R. § 300.2(m). Further, Cantor's spokesperson reportedly described the communication in terms of a direct solicitation:

⁷¹ See Stanton, *Cantor Gave \$25K*, *supra*.

⁷² Compl. at 1-2, 5, MUR 6563; Compl. at 2-4, MUR 6733.

⁷³ Schock MUR 6563 Resp. at 1, 4.

⁷⁴ *Id.* at 2.

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1 "... Cantor *was asked by Congressman Schock to contribute* to an organization that was
2 supporting Adam Kinzinger in the Illinois election of March 20."⁷⁵

3 Schock asserts in his response that he did not solicit a contribution from Cantor; rather,
4 he "asked whether Rep. Cantor could match a fundraising target of \$25,000."⁷⁶ A request to
5 match a fundraising target, however, is by definition "request[ing] or recommend[ing]" that the
6 person "make a contribution, donation, transfer of funds. . . ," and thus constitutes a solicitation.
7 *See, e.g.*, 11 C.F.R. § 300.2(m)(2)(v), (viii), (xiv) ("to solicit" includes variations such as
8 "Giving \$100,00 to Group X would be a very smart idea," "Group X is having a fundraiser this
9 week; you should go," and "Candidate says to a potential donor: 'The money you will help us
10 raise will allow us to communicate our message to the voters through Labor Day.'").

11 According to Schock, because he did not "ask, request or recommend" that Cantor make
12 a contribution from his own funds or from any particular committee he controlled, he did not
13 solicit Cantor under section 300.2(m).⁷⁷ Schock makes this argument even as he states that he
14 "was clearly asking Rep. Cantor to raise funds for CPA's ads in support of Mr. Kinzinger, and he
15 said so directly."⁷⁸ In essence, Schock's argument appears to be that he did not solicit Cantor to
16 contribute himself, but rather that he asked Cantor to raise the contribution from another source.
17 The Commission's definition of "to solicit," however, would cover either situation: even

⁷⁵ Stanton, *Cantor Gave \$25K, supra* (emphasis added); *see* 11 C.F.R. § 300.2(m)(2)(i) ("to solicit" includes the statement "Please give \$100,000 to Group X."). Other characterizations in the current record of Schock's discussion with Cantor also satisfy the Commission's definition of what constitutes a solicitation. *See* Schock MOI ¶ 23 (Schock stated that he does not remember exactly what he told Cantor but believes he said that, "We're doing \$25,000[;] would you be able to do \$25,000[?]"); Cantor MOI ¶ 8 (Schock called Cantor and asked whether he would give \$25,000 to a super PAC operating in Illinois in connection with Kinzinger's race).

⁷⁶ Schock MUR 6563 Resp. at 4.

⁷⁷ *Id.*

⁷⁸ *Id.* at 5.

1 assuming that asking Cantor if he could match a fundraising target is not a "direct" request for a
2 contribution, "to solicit" explicitly includes both direct and indirect requests.⁷⁹ And neither the
3 language of the regulation nor the Commission's 2006 Explanation and Justification of the
4 regulation contain any requirement that the solicitor explicitly state the source of funds to be
5 used.⁸⁰ Nor does Schock's statement to Cantor constitute a "mere statement of political
6 support," which the regulation excludes from its reach.⁸¹ In sum, Schock's claim that he asked
7 Cantor to raise funds for CPA is a concession, not a denial, notwithstanding his characterization
8 of the request as related to fundraising targets. Accordingly, Schock "solicited" a contribution
9 within the meaning of the Act and regulations.

10 Schock also argues that if the Commission were to construe section 441i(e) to apply to
11 the Member-to-Member communication that is at issue here, doing so would violate the First
12 Amendment because no risk of corruption exists when, as happened here, one Member asks
13 another Member to "match a fundraising target," and the other Member does so by using funds
14 subject to the limitations and prohibitions of the Act.⁸² No exception to section 441i(e) exists for
15 communications between officeholders. As for risk of corruption, the MUR 6563 Complaint
16 asserts how such a contribution could pose a threat of actual or at least apparent corruption:

17 Absent the solicitation restriction of section 441i(e)(1)(A), a federal
18 officeholder facing a difficult reelection contest could and predictably
19 would solicit enormous contributions to an [independent expenditure-only
20 committee] supporting that embattled officeholder from other Members of

⁷⁹ See 11 C.F.R. § 300.2(m) ("A solicitation may be made directly or indirectly. . .").

⁸⁰ See *id.*; Final Rules and Explanation and Justification for Definitions of "Solicit" and "Direct," 71 Fed. Reg. 13,926 (Mar. 20, 2006).

⁸¹ See 11 C.F.R. § 300.2(m).

⁸² Schock MUR 6563 Resp. at 5-7.

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1 Congress sitting in safe electoral districts with large financial war chests
2 and no electoral competition. Where a Member responded to such a
3 solicitation by making such a contribution to the [independent
4 expenditure-only committee] supporting the embattled officeholder, that
5 officeholder would be beholden to the generous colleague just as the
6 embattled officeholder would be beholden to any other donor.⁸³

7
8 Nonetheless, even if the risk of corruption is less in the context of Member discussions, no
9 federal court has found that the provision violates the Constitution, and there is no basis for the
10 Commission to decline to enforce this provision where there is reason to believe the provision
11 was violated. In sum, the available information indicates that Schock solicited a \$25,000
12 contribution from Cantor.

13 b. 18th District Committee \$25,000 Contribution to CPA

14 The MUR 6733 Complaint alleges that Schock impermissibly solicited, and his campaign
15 staff impermissibly directed, a \$25,000 contribution to CPA from the 18th District Committee.⁸⁴
16 Schock denies that his staff directed the contribution, asserting that his staff's involvement in the
17 "mechanics of making the contribution" does not amount to "direction" under section 300.2(n) of
18 the Commission's regulations.⁸⁵ We agree that Schock's Chief of Staff, Shearer, does not appear
19 to have directed the contribution in that he did not provide the 18th District Committee "with the
20 identity of an appropriate recipient" after the Committee had "already expressed an intent to
21 make a contribution or donation, but lack[ed] the identity of an appropriate candidate, political
22 committee or organization to which to make that contribution or donation."⁸⁶ Instead, the

⁸³ Complaint at 4 n.2, MUR 6563.

⁸⁴ Complaint at 4, MUR 6733.

⁸⁵ Schock MUR 6733 Resp. at 8.

⁸⁶ Final Rules and Explanation and Justification for Definitions of "Solicit" and "Direct," 71 Fed. Reg. 13,926, 13,932 (Mar. 20, 2006).

1 available information supports a finding of reason to believe that Schock solicited the
2 contribution from the 18th District Committee.

3 Schock acknowledges that his communication asking Cantor to contribute \$25,000 to
4 CPA, quoted as "I'm going to do \$25,000,"⁸⁷ referenced the 18th District Committee's \$25,000
5 contribution to CPA.⁸⁸ Schock's use of the pronoun "I" suggests a personal involvement in the
6 contribution such that Schock "ask[ed], request [ed] or recommend[ed]" that the 18th District
7 Committee make the contribution. *See* 11 C.F.R. § 300.2(m). Even framed as "We're doing
8 \$25,000," as Schock did in his OCE interview,⁸⁹ suggests that Schock was involved in the
9 contribution.

10 Schock's likely involvement in the 18th District Committee contribution is also
11 supported by his other statements. Schock says that he sought to assist Kinzinger in his race
12 against Manzullo and believed that CPA needed additional funds to be able to air its anti-
13 Manzullo ads again prior to the election.⁹⁰ Schock's quoted statements signify his personal and
14 direct involvement in the raising of contributions to CPA: "I was trying to do everything I could
15 to help the Kinzinger campaign and reached out to the committee that was running ads in support
16 of them" and "I asked if I could specify a donation to [CPA's television ads]."⁹¹ Under these
17 circumstances, it seems unlikely that Schock would have solicited Cantor only after the 18th
18 District Committee independently contributed to CPA, without Schock asking, requesting, or

⁸⁷ *See* Stanton, *Cantor Gave \$25K, supra*.

⁸⁸ *See* Schock MOI ¶ 24.

⁸⁹ *Id.*

⁹⁰ Schock MUR 6563 Resp. at 2.

⁹¹ *See* Stanton, *Cantor Gave \$25K, supra*.

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1 recommending that the 18th District Committee make the contribution. *See* 11 C.F.R.

2 § 300.2(m).

3 Also supporting the inference that Schock solicited the 18th District Committee
4 contribution are the facts that Schock helped to establish the Committee's federal account,⁹² that
5 he had provided over 95% of the Committee's receipts through his Victory Committee by the
6 time of the Committee's contribution, that it had not made a contribution to another federal
7 committee to date, and that its donations to nonfederal candidates totaled \$7,500 to date.⁹³ The
8 18th District Committee contributed \$25,000 to CPA, about 24% of its cash-on-hand. These
9 circumstances suggest that the 18th District Committee would not have made such a large
10 contribution — its first federal contribution — without a request from Schock, the individual
11 who provided nearly all of its funding.

12 Although the mechanics of the 18th District Committee contribution suggest control by
13 Schock — his Campaign Director originally made the contribution to CPA at the direction of his
14 Chief of Staff⁹⁴ — Schock asserts in his unsworn responses that he “learned that the 18th District
15 Republican Central Committee . . . was planning to make a \$25,000 donation to CPA from its
16 federal account,” and that he “was told by Mike Bigger, the Chairman of the 18th District
17 Committee . . . that Mr. Bigger intended to make a contribution to CPA from the 18th District

⁹² See Schock MOI ¶ 14.

⁹³ See note 47, *supra*.

⁹⁴ See Hoerr MOI ¶ 10. As noted, the contribution was later replaced with a wire transfer by Bigger of the 18th District Committee. *See id.* ¶¶ 16-19.

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1 Committee."⁹⁵ Schock says he did not solicit the contribution and has never requested that the
2 18th District Committee contribute to any political campaign,⁹⁶ but his statements that he learned
3 that the Committee "was planning to" contribute to CPA and that Bigger told him that Bigger
4 "intended to" contribute do not foreclose Schock's involvement in the contribution. Schock
5 asserts that he does not have the authority to make decisions concerning how the 18th District
6 Committee spends its funds,⁹⁷ but that also is not inconsistent with Schock asking the Committee
7 to make the \$25,000 contribution to CPA instead of making the Committee's contribution
8 himself. The 18th District Committee itself says that it made the decision to make the \$25,000
9 contribution to CPA — which is also consistent with Schock soliciting the contributions — but is
10 silent as to how the contribution arose.⁹⁸

11 The circumstances here — that the 18th District Committee contribution arose in
12 connection with Schock's desire to assist Kinzinger's election, that Schock described the
13 contribution to Cantor in personal terms, that Schock's staffer appeared to be the person who
14 physically made the original contribution, and that Schock's Victory Committee had provided
15 nearly all of the funding for the 18th District Committee which had not previously made any
16 federal contribution — taken together with Schock's general, unsworn denial, support a
17 reasonable inference that Schock asked, requested, or recommended that the 18th District

⁹⁵ Schock MUR 6563 Resp. at 2, Schock MUR 6563 Supp. Resp. at 1; *but see* Schock MOI ¶¶ 15, 19-20 (Schock stated that he did not solicit this contribution and learned from Bigger that it had been made approximately 10 days before the primary election).

⁹⁶ Schock MUR 6563 Supp. Resp. at 1; Schock MOI ¶ 15.

⁹⁷ Schock MUR 6563 Resp. at 2.

⁹⁸ 18th District Committee Resp. at 1, MUR 6733.

1 Committee contribute \$25,000 to CPA, thus soliciting the contribution. *See* 11 C.F.R.

2 § 300.2(m).

3 c. David Herro \$35,000 Contribution to CPA

4 The MUR 6733 Complaint alleges that Schock impermissibly solicited contributions
5 from Herro without limiting the amount to \$5,000 in permissible funds.⁹⁹ As to the origin of the
6 contribution, Schock says that he contacted Herro in March 2012 about contributing to CPA.¹⁰⁰
7 Schock and Herro both acknowledge that Schock asked Herro if he would help with Kinzinger's
8 close election,¹⁰¹ and a Schock staffer provided CPA's wire transfer information to Herro at
9 Schock's request.¹⁰² Schock thereby solicited Herro for a contribution. *See* 11 C.F.R.
10 § 300.2(m).¹⁰³ Both Schock and Herro assert that Schock did not recommend a specific amount
11 to Herro,¹⁰⁴ who contributed \$35,000 to CPA on March 14, 2012.

12 Under section 441i(e), federal candidates and officeholders such as Schock may not
13 solicit funds in connection with an election for federal office unless the funds are subject to the
14 limitations, prohibitions, and reporting provisions of the Act. 2 U.S.C. § 441i(e)(1)(A);
15 11 C.F.R. § 300.61. The Act limits contributions to non-authorized, non-party committees to
16 \$5,000 in any calendar year. 2 U.S.C. § 441a(a)(1)(C). The Commission in AO 2011-12
17 (Majority PAC) thus concluded that federal candidates and officeholders "may not solicit

⁹⁹ Compl. at 4, MUR 6733.

¹⁰⁰ *See* Schock MOI ¶ 28.

¹⁰¹ *See id.* ¶ 29; Schock MUR 6733 Resp. at 3, 7; Herro MOI ¶ 9.

¹⁰² *See* Shearer MOI ¶¶ 23, 25-26.

¹⁰³ *See, e.g., id.* § 300.2(m)(2)(xiv) ("to solicit" includes statement "Candidate says to potential donor: 'The money you will help us raise will allow us to communicate our message to the voters through Labor Day.'").

¹⁰⁴ *See* Schock MOI ¶ 30; Schock MUR 6733 Resp. at 3, 7; Herro MOI ¶ 11.

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1 unlimited contributions from individuals . . . on behalf of independent expenditure-only political
2 committees,” and that such officeholders and candidates “may only solicit contributions of up to
3 \$5,000 from individuals” for such committees.¹⁰⁵

4 The available information indicates that Schock did not solicit Herro for a contribution
5 subject to the applicable \$5,000 contribution limit. *See* 2 U.S.C. § 441a(a)(1)(C). Rather,
6 Schock made an open-ended request of Herro that resulted in a contribution seven times the
7 \$5,000 statutory limit. Schock also had reason to expect that Herro might contribute an amount
8 greater than \$5,000: Herro had contributed \$15,000 and \$10,000 in 2010 and 2011, respectively,
9 to Schock’s joint fundraiser committee, the Victory Committee.¹⁰⁶ Further, Schock’s other
10 solicitations for contributions to CPA were well above \$5,000: Schock acknowledges that he
11 said to Cantor “something along the lines of” his reported request to Cantor, “Look, I’m going to
12 do \$25,000 [specifically] for the Kinzinger campaign for the television campaign . . . Can you
13 match that?”¹⁰⁷

14 Schock asserts in his Response to the MUR 6733 Complaint that “[a] conversation about
15 the general need to raise funds to support a candidate, where no specific donation amounts are

¹⁰⁵ Advisory Op. 2011-12 at 3-4. The Commission added, in responding to the Requester’s question regarding federal candidate and officeholder participation in fundraisers for independent-expenditure-only political committees, that — as stated in the Commission’s regulations:

a Federal candidate or officeholder may not solicit any funds that are not “subject to the limitations, prohibitions, and reporting requirements of the Act.” 11 CFR 300.61. Rather, a Federal candidate or officeholder who solicits funds at such an event must limit any solicitation “to funds that comply with the amount limitations and source prohibitions of the Act.” 11 CFR 300.64(b)(2).

Id. at 5: Section 300.64 of the Commission’s regulations implements section 441i(e)(3) of the Act regarding federal candidate and officeholder attendance at fundraising events for State, district and local political party committees; at such events, federal candidates and officeholders remain subject to the provisions of section 441i(e)(1). *See Shays v. FEC*, 528 F.3d 914, 933-34 (D.C. Cir. 2008).

¹⁰⁶ *See* Victory Committee 2010 July Quarterly Report at 6; 2011 October Quarterly Report at 29.

¹⁰⁷ *See* Schock MUR 6563 Resp. at 2; Stanton, *Cantor Gave \$25K*, *supra*.

1 discussed or anticipated, simply does not fall under restrictions found in § 441i(e).¹⁰⁸ Schock
2 cites no authority for this assertion, however, and does not address the prohibition on Schock
3 soliciting funds "unless the funds are subject to the limitations . . . of this Act." *See* 2 U.S.C.
4 § 441i(e)(1)(A). *Cf.* 11 C.F.R. § 300.64(b)(2) (under section 441i(e)(1) and (3), a federal
5 candidate or officeholder may solicit funds at a non-federal fundraising event, provided that the
6 solicitation is limited to funds that comply with the amount limitations and source prohibitions of
7 the Act and are consistent with State law).

8 In sum, it appears that Schock did not limit his solicitation of Herro to funds that
9 complied with the Act's \$5,000 limitation as required by section 441i(e). *See* 2 U.S.C.
10 §§ 441i(e)(1)(A), 441a(a)(1)(C).

11 d. There Is Reason to Believe that Schock Violated Section 441i(e)

12 Section 441i(e)(1)(A) prohibits federal candidates and officeholders like Schock from
13 soliciting contributions outside the Act's limitations and prohibitions. The Commission affirmed
14 in AO 2011-12 (Majority PAC) that this provision continues to apply where the officeholder
15 solicits an individual or a federal political action committee for an amount greater than \$5,000,
16 *see* 2 U.S.C. § 441a(a)(1)(C), even though those persons may permissibly contribute an
17 unlimited amount to an independent-expenditure-only committee. In light of the foregoing
18 information and analysis, we recommend that the Commission find reason to believe that Schock
19 violated 2 U.S.C. § 441i(e) in connection with the ERICPAC and 18th District Committee
20 \$25,000 contributions to CPA and the Herro \$35,000 contribution to CPA.

¹⁰⁸ Schock MUR 6733 Resp. at 7.

1 3. There Is No Reason to Believe Rep. Schock Made an Excessive
2 Contribution
3

4 As for the allegation that Schock himself made an excessive contribution, the available
5 information does not indicate that Schock himself made any contribution. Accordingly, we
6 recommend that the Commission find no reason to believe that Rep. Schock violated 2 U.S.C.
7 § 441a(a).

8 4. There Is No Reason to Believe Rep. Davis Violated Section 441i(e)
9

10 The MUR 6733 Complaint alleges that Davis impermissibly participated in the
11 solicitation, direction and receipt of the contributions in excess of \$5,000 from ERICPAC, the
12 18th District Committee, David Herro, and Anne Dias Griffin.¹⁰⁹ See 2 U.S.C. §§ 441a(a),
13 441i(e). Davis was not a federal candidate or officeholder at the time of the activity in this
14 matter, but the prohibitions of section 441i(e) apply as well to agents of federal candidates and
15 officeholders. See *id.* § 441i(e)(1); 11 C.F.R. §§ 300.60, 300.61.¹¹⁰

16 The Complaint identifies Davis as Chief of Staff for Rep. John Shimkus at the time of the
17 events in this matter.¹¹¹ Schock's Chief of Staff Shearer describes Davis as the executive
18 director of the Illinois State Republican Party, "number two" at Shimkus's district office, and a
19 "senior campaign person" working for Shimkus's campaign.¹¹²

¹⁰⁹ Compl. at 2-4, MUR 6733.

¹¹⁰ Agents of federal candidates and officeholders are prohibited from engaging in these activities when "acting on behalf of a Federal candidate or individual holding Federal office." 11 C.F.R. § 300.60(c).

¹¹¹ Compl. at 2, MUR 6733.

¹¹² See Shearer MOI ¶ 13. Shimkus's principal campaign committee, Volunteers for Shimkus, paid Davis \$3,051.00 every two weeks during the 2012 election cycle from February 2011 through May 2012 for "Administrative/Salary/Overall: Payroll." See, e.g., Volunteers for Shimkus 2012 Amended April Quarterly at 62, 79 (March 2 and March 16, 2012, payments to Davis). Other information identifies Davis as "Project & Grants Coordinator" at Shimkus's office in Springfield, Illinois. See CONG. YELLOW BOOK, Fall 2012, at 707. The OCE Report identifies Davis as the Budget Director for Shimkus. OCE Report at 18.

1 The Commission defines "agent" in its regulations implementing section 441i(e) as any
2 person who has actual authority, either express or implied, to engage in soliciting, receiving,
3 directing, transferring or spending funds in connection with any election on behalf of a federal
4 candidate or officeholder. 11 C.F.R. § 300.2(b)(3). As a paid "senior campaign person" for
5 Shimkus who used the campaign's "volunteersforshimkus.org" e-mail address,¹¹³ Davis appears
6 to have been an agent of Shimkus and covered by section 441i(e).¹¹⁴

7 The available information indicates that Davis helped facilitate the contributions in this
8 matter. CPA personnel state that Davis was the contact person for these contributions and Davis
9 communicated with CPA regarding the overall purpose of the contributions.¹¹⁵ Davis also
10 forwarded to the chiefs of staff for Schock and Shimkus a CPA prospectus and instructions for
11 wiring and online contributions.¹¹⁶

12 The available information, however, does not suggest that Davis solicited, directed,
13 received, transferred, spent, or disbursed the contributed funds. Davis does not appear to have
14 asked any of the contributors to give to CPA or identified CPA to persons who had already
15 expressed an intent to make a contribution but lacked the identity of an appropriate political

¹¹³ See, e.g., Davis E-mail to Story, *supra*.

¹¹⁴ Shimkus is identified in an e-mail, along with Schock and Cantor, as having "sent money in to support [the ad] that the Campaign for Primary Accountability is running," although it is not clear which contribution(s) to CPA are referred to here. See e-mail from Rob Collins to Ted Burnes (Mar. 15, 2012 10:24 AM), OCE Report Ex. 23 at 12-9525_0140; *supra* note 29.

¹¹⁵ See *supra* at 7 & note 27.

¹¹⁶ See E-mail from Rodney Davis to Steve Shearer & Craig Roberts (Mar. 14, 2012 02:49 PM CDT), OCE Report Ex. 14 at 12-9525_0115; see also CONG. YELLOW BOOK, Fall 2012, at 706 (identifying Roberts as Shimkus's Chief of Staff).

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1 committee to which to make that contribution.¹¹⁷ See 11 C.F.R. § 300.2(m) (to solicit) and (n)
2 (to direct). Neither does Davis appear to have received the funds contributed to CPA; the
3 available information suggests that contributors forwarded the funds directly to CPA.

4 Accordingly, we recommend that the Commission find no reason to believe that Rodney
5 Davis violated 2 U.S.C. § 441i(e).

6 5. There Is No Reason to Believe the Other Respondents Made or Accepted
7 Excessive Contributions
8

9 Political committees like CPA that make only independent expenditures, and do not make
10 any contributions,¹¹⁸ may accept unlimited contributions from individuals and from other
11 political committees like ERICPAC and the 18th District Committee. See AO 2010-11
12 (Commonsense Ten); *Citizens United v. FEC*; *SpeechNow.org v. FEC*. Accordingly, ERICPAC
13 and the 18th District Committee, in making \$25,000 contributions to CPA, have not made an
14 excessive contribution. Further, as we conclude above regarding Schock, Cantor has not made
15 an excessive contribution. Nor has CPA received an excessive contribution. We thus
16 recommend that the Commission find no reason to believe that ERICPAC, the 18th District
17 Committee or Cantor violated 2 U.S.C. § 441a(a) or that CPA violated 2 U.S.C. § 441a(f).
18
19
20
21

¹¹⁷ See Final Rules and Explanation and Justification for Definitions of "Solicit" and "Direct," 71 Fed. Reg. 13,926, 13,932 (Mar. 20, 2006).

¹¹⁸ CPA has not established a separate account for contributions subject to the limitations and prohibitions of the Act. See Stipulated Order and Consent Judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C Aug. 19, 2011); see also FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

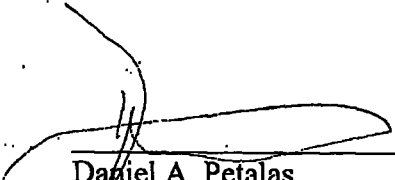
IV. RECOMMENDATIONS

1. Find reason to believe that Representative Aaron Schock violated 2 U.S.C. § 441i(e);
2. Enter into conciliation with Representative Aaron Schock prior to a finding of probable cause to believe;
3. Find no reason to believe that Representative Aaron Schock violated 2 U.S.C. § 441a(a);
4. Find no reason to believe that Representative Rodney Davis violated 2 U.S.C. § 441i(e) and close the MUR 6733 file as to him;
5. Find no reason to believe that Every Republican is Crucial (ERICPAC) and Melinda Fowler Allen in her official capacity as treasurer violated 2 U.S.C. § 441a(a) and close the MUR 6563 and MUR 6733 files as to them;
6. Find no reason to believe that Representative Eric Cantor violated 2 U.S.C. § 441a(a) and close the MUR 6563 and MUR 6733 files as to him;
7. Find no reason to believe that the 18th District Republican Central Committee (Federal Account) and Paul Kilgore in his official capacity as treasurer violated 2 U.S.C. § 441a(a) and close the MUR 6733 file as to them;
8. Find no reason to believe that the Campaign for Primary Accountability Inc. and Jonathan Martin in his official capacity as treasurer violated 2 U.S.C. § 441a(f) and close the MUR 6563 and MUR 6733 files as to them;
9. Approve the attached Conciliation Agreement;
10. Approve the attached Factual and Legal Analyses; and


11. Approve the appropriate letters.

Date

June 30, 2014

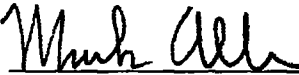

Daniel A. Petalas

Associate General Counsel for Enforcement

 by MA

Peter G. Blumberg

Assistant General Counsel



Mark Allen

Attorney

Attachments

1. Factual and Legal Analysis for Representative Aaron Schock
2. Factual and Legal Analysis for Representative Rodney Davis
3. Factual and Legal Analysis for Every Republican is Crucial (ERICPAC)
and Representative Eric Cantor
4. Factual and Legal Analysis for 18th District Republican Central Committee
(Federal Account)
5. Factual and Legal Analysis for Campaign for Primary Accountability Inc.

1 **FEDERAL ELECTION COMMISSION**

2
3 RESPONDENT: Representative Aaron Schock

MURs 6563 and 6733

4
5 **FACTUAL AND LEGAL ANALYSIS**

6 **I. INTRODUCTION**

7 These matters were generated by Complaints filed with the Federal Election Commission
8 by the Campaign Legal Center and Democracy 21 in MUR 6563 and by Eva Jehle in MUR 6733,
9 alleging violations of the Federal Election Campaign Act of 1971, as amended, ("the Act") by
10 Respondent.

11 **II. FACTUAL AND LEGAL ANALYSIS**

12 **A. Background**

13 The Complaints in MURs 6563 and 6733 allege that Representative Aaron Schock (18th
14 District, Illinois) solicited three contributions to an independent-expenditure-only political
15 committee, Campaign for Primary Accountability Inc. ("CPA"), in violation of the Act.

16 The Complaint in MUR 6563 alleges that Schock solicited a \$25,000 contribution from
17 Representative Eric Cantor (7th District, Virginia) in violation of 2 U.S.C. §§ 441i(e) and
18 441a(a). That Complaint recites Schock's reported description of a conversation with Cantor in
19 terms that suggest a potential violation: "I said, 'Look, I'm going to do \$25,000 [specifically]
20 for the Kinzinger campaign for the television campaign' and said, 'Can you match that?' And he
21 said, 'Absolutely.'"¹ Cantor's leadership PAC, Every Republican Is Crucial (ERICPAC),
22 subsequently made a \$25,000 contribution to CPA, which was supporting Representative
23 Kinzinger in a primary election in the Illinois 16th Congressional District. The Complaint

¹ See John Stanton, *Eric Cantor Gave \$25K to Anti-Incumbent PAC to Aid Adam Kinzinger*, ROLL CALL, Apr. 6, 2012, available at http://www.rollcall.com/news/Eric_Cantor_Gave_Money_to_Super_PAC_to_Aid_Adam_Kinzinger-213651-1.html [hereinafter Stanton, *Cantor Gave \$25K*] (alteration in original); Compl. at 2 n.1, MUR 6563 (Apr. 30, 2012).

1 contends that Schock's solicitation of Cantor exceeded the limits imposed under Sections 441i(e)
2 and 441a(a), relying on the Commission's conclusion in Advisory Op. 2011-12 (Majority PAC)
3 that those Sections prohibit a federal officeholder from soliciting contributions from individuals
4 or federal political action committees to an independent-expenditure-only committee such as
5 CPA in excess of \$5,000.

6 The Complaint in MUR 6733 makes allegations based on an investigative report that the
7 Office of Congressional Ethics ("OCE" and the "OCE Report") submitted to the House of
8 Representatives Committee on Ethics ("House Ethics").² According to the OCE Report, OCE
9 investigated Schock's alleged "solicit[ation of] contributions for an independent expenditure-
10 only political committee in excess of \$5,000 per donor, in violation of federal law, House rules,
11 and standards of conduct."³ The Complaint in MUR 6733 alleges that Schock impermissibly
12 solicited a \$25,000 contribution from Cantor, but also alleges that Schock impermissibly
13 solicited, and his campaign staff impermissibly directed, a \$25,000 contribution to CPA from the
14 18th District Republican Central Committee (Federal Account) ("18th District Committee"), a

² See Compl. at 2, Attach. A, MUR 6733 (May 1, 2013); OCE Review No. 12-9525, adopted Aug. 24, 2012, available at <http://ethics.house.gov/sites/ethics.house.gov/files/OCE%20Report%20Rep.%20Schock.pdf>. On February 6, 2013, OCE publicly released its report that it referred to House Ethics on August 30, 2012. See FEBRUARY 6, 2013—OCE REFERRAL REGARDING REP. AARON SCHOCK, available at <http://oce.house.gov/2013/02/february-6-2013---oce-referral-regarding-rep-aaron-schock.html>.

³ See OCE Report at 1. OCE's investigation included interviews and review of documents obtained from Schock, Cantor, CPA personnel, and other persons. The OCE Report refers to Cantor as "Representative 1." See *id.* at 4 n.1, 5. On the basis of its investigation, OCE found that Schock solicited Cantor to contribute \$25,000 to CPA and found "substantial reason to believe" that Schock's campaign committee solicited the 18th District Committee to contribute \$25,000 to CPA, and recommended that House Ethics further review the allegation. *Id.* at 21. According to a House Ethics press release from February 6, 2013, House Ethics will "gather additional information necessary to complete its review." STATEMENT OF THE CHAIRMAN AND RANKING MEMBER OF THE COMMITTEE ON ETHICS REGARDING REPRESENTATIVE AARON SCHOCK (Feb. 6, 2013), available at <http://ethics.house.gov/press-release/statement-chairman-and-ranking-member-committee-ethics-regarding-representative-aaro-0>. House Ethics also noted that "the mere fact of conducting further review of a referral . . . does not itself indicate that any violation has occurred, or reflect any judgment on behalf of the Committee." *Id.*; see also OCE Report at 3 ("The [OCE] Board notes that these findings do not constitute a determination that a violation actually occurred."). To date, publicly available information does not indicate the status of House Ethics's review of the OCE Report.

1 local party committee in Schock's congressional district. In addition, the MUR 6733 Complaint
2 further alleges that Schock impermissibly solicited a \$35,000 contribution to CPA from
3 David Herro.

4 Schock contends in his Responses to the Complaints that none of the three alleged
5 solicitations resulted in a violation of the Act. First, he asserts that his communication to Cantor
6 was not a solicitation under the Commission's regulations,⁴ and that in any event the
7 Commission should not construe Section 441i(e) to apply to the communication at issue here
8 because it was from one Member of Congress to another Member.⁵ Second, Schock denies that
9 he solicited or that he or his campaign staff directed the 18th District Committee's contribution
10 to CPA.⁶ Finally, Schock acknowledges that he "reached out to David Herro" and "discussed
11 with Mr. Herro the need for funds to support Mr. Kinzinger's efforts," but asserts that he "did not
12 mention any dollar amounts," and that such a conversation does not fall within the restrictions of
13 Section 441i(e).⁷

14 Based on the available information, the Commission finds reason to believe that Schock
15 impermissibly solicited contributions in violation of 2 U.S.C. § 441i(e). The Commission further
16 finds no reason to believe that Schock made an excessive contribution. *See* 2 U.S.C. § 441a(a).

⁴ Schock Resp. at 1, 4-5 (June 22, 2012), MUR 6563 ("Schock MUR 6563-Resp."); Schock Resp. at 1, 4-6 (June 28, 2013), MUR 6733 ("Schock MUR 6733-Resp."). *See* 11 C.F.R. § 300.2(m) (definition of "to solicit").

⁵ Schock MUR 6563 Resp. at 5-7; Schock MUR 6733 Resp. at 6-7.

⁶ Schock MUR 6563 Supp. Resp. at 1 (Oct. 31, 2012); Schock MUR 6733 Resp. at 1, 8; *see* 11 C.F.R. § 300.2(n) (definition of "to direct").

⁷ Schock MUR 6733 Resp. at 3, 7. Schock also responded to OCE and to House Ethics, denying any violation and making the same arguments he has presented to the Commission in MURs 6563 and 6733. *See* Letter from Robert K. Kelner, Counsel, to Deborah Mayer, House Committee on Ethics (Dec. 6, 2012) ("Schock Letter to House Ethics"), available at <http://ethics.house.gov/sites/ethics.house.gov/files/Rep.%20Schock%20Response.pdf>; Letter from Robert K. Kelner to Kedric Payne, OCE (July 17, 2012) ("Schock Letter to OCE"), available at <http://ethics.house.gov/sites/ethics.house.gov/files/Rep.%20Schock%20Response.pdf>.

B. Factual Summary

Representatives Adam Kinzinger and Don Manzullo were candidates in the Illinois 16th Congressional District primary election held on March 20, 2012. Schock states that he supported Kinzinger and sought to assist him.⁸ Schock further states that he learned that CPA was broadcasting advertisements opposing Manzullo and “believed that CPA needed additional funds to be able to air the advertisements again prior to the election.”⁹ Schock’s first-person description of relevant events was quoted in a press article cited in the MUR 6563 Complaint:

“The final week of the campaign, it got very tight, it was neck and neck. I was trying to do everything I could to help the Kinzinger campaign and reached out to the committee that was running ads in support of them.”

“They were basically running the television ads for him, [and] I asked if I could specify a donation to them,” to be used only in the Illinois primary.

“And they said I could.”¹⁰

Based on the available information, there is reason to believe that Schock solicited the following contributions to CPA:

⁸ See Schock MUR 6563 Resp. at 2: Schock’s responses to the Commission are unsworn. His statements to OCE are also unsworn; according to OCE, he refused to sign a written acknowledgment of the warning that his OCE interview statements were subject to the False Statements Act, see 18 U.S.C. § 1001. See OCE Mem. of Interview of Schock ¶¶ 1-2, OCE Report, Ex. 9 at 12-9525_0089 (“Schock MOI”).

⁹ Schock MUR 6563 Resp. at 2.

¹⁰ Stanton, *Cantor Gave \$25K*, *supra* (alteration in original). The article also noted that Schock stated that he discussed the legality of the contribution with the National Republican Congressional Committee, but a Schock spokesman reportedly later clarified that Schock misspoke and that the contributions were not vetted with the NRCC but rather with attorneys specializing in campaign finance law. *Id.*

Contributor	Amount	Date Received ¹¹
David Herro Trust	\$35,000.00	March 14, 2012
ERICPAC	\$25,000.00	March 15, 2012
18th District Committee	\$25,000.00	March 16, 2012

1
2 CPA Development Coordinator Hannah Christian states that to her knowledge no one from CPA
3 requested the contributions from these individuals and entities.¹²

4 CPA aired and distributed independent expenditure advertisements opposing Manzullo
5 totaling \$239,531.68, all during the period March 8-19, 2012. The only expenditures for
6 television advertising — in the amounts of \$15,000, \$25,000, and \$35,000 respectively — all
7 occurred on March 16 or 17, 2012, after or on the same day as the contributions at issue in this
8 matter.¹³ CPA's television advertisement is described in an e-mail from Rob Collins, Cantor's
9 former Chief of Staff, as "the ad that Shimkus, Schock and Cantor have sent money in to support
10 that the Campaign for Primary Accountability is running."¹⁴

11 As to the first of the contributions that the available information suggests was made at
12 Schock's request, Schock's Campaign Director, Tania Hoerr, made the contribution on the 18th

¹¹ See CPA 2012 Amended April Monthly Report at 6, 8-10 (July 23, 2012).

¹² See OCE Mem. of Interview of CPA Development Coordinator (Hannah Christian) ¶ 26, OCE Report Ex. 6 at 12-9525_0028 ("Christian MOI").

¹³ See CPA 2012 Amended April Monthly Report at 38; CPA 24/48 Hour Notice of Independent Expenditures (Mar. 19, 2012). CPA also disclosed an \$18,000 independent expenditure on the same date, March 17, 2012, to the same vendor for a radio advertisement, the only radio communication among CPA's independent expenditures opposing Manzullo. See *id.* at 39.

¹⁴ E-mail from Rob Collins to Ted Burnes (Mar. 15, 2012 10:24 AM), OCE Report Ex. 23 at 12-9525_0140. Rob Collins is a partner with the political strategy firm Purple Strategies LLC, and Ted Burnes is Director of American College of Radiology PAC and Political Education. See OCE Report at 10; Burnes MOI ¶¶ 2, 12.

1 District Committee account at the direction of Schock's Chief of Staff, Steve Shearer.¹⁵ Hoerr
2 says that she:

- 3 • had the necessary banking information to make the online contribution because she
4 established the 18th District Committee account and routinely deposits money into its
5 account from Schock's joint fundraising committee, Schock Victory Committee
6 ("Victory Committee");¹⁶
7
- 8 • did not recall needing to get approval from anyone other than Shearer in order to make
9 the contribution, and did not recall speaking to 18th District Committee Chairman Mike
10 Bigger prior to making the contribution;¹⁷
11
- 12 • was not sure why Bigger did not make the contribution online himself;¹⁸
13
- 14 • did not speak to Schock at that time about the contribution and did not recall if Shearer
15 told her if anyone requested that the contribution be made;¹⁹ and
16
- 17 • learned from CPA that it would take a significant amount of time to process the online
18 contribution she made, and that Shearer contacted Bigger for him to make the
19 contribution from the 18th District Committee via a wire transfer.²⁰
20

21 The online contribution was duly rescinded and replaced by a wire transfer from the 18th
22 District Committee.²¹ Shearer says that Bigger contacted him to ask for the wire transfer

¹⁵ See OCE Mem. of Interview of Tania Hoerr ¶¶ 3, 10, OCE Report Ex. 11 at 12-9525_0100 ("Hoerr MOI"). The OCE Report generally refers to Hoerr and Shearer by position rather than name, but they are identified in the Memoranda of Interviews of other witnesses. See, e.g., Christian MOI ¶ 19; Hoerr MOI ¶ 6. Hoerr is Schock's sister. See OCE Report at 15 n.62.

¹⁶ See Hoerr MOI ¶ 12. The Victory Committee amended its Statement of Organization on March 9, 2011, to add the 18th District Committee as a participating committee along with Schock for Congress (Schock's principal campaign committee), GOP Generation Y Fund (Schock's leadership PAC), and the National Republican Congressional Committee.

¹⁷ *Id.* ¶ 13.

¹⁸ *Id.* ¶ 15.

¹⁹ *Id.* ¶ 14.

²⁰ *Id.* ¶¶ 16-19.

²¹ See Hoerr MOI ¶ 19; OCE Mem. of Interview of CPA Managing Director (Jamie Story) ¶¶ 14-15, OCE Report Ex. 4 at 12-9525_0021 ("Story MOI").

1 information after Bigger and Schock had a conversation about eight or nine days prior to the
2 Kinzinger primary election.²²

3 Schock contends that shortly before the March 20 primary election, he “learned that the
4 18th District Republican Central Committee . . . was planning to make a \$25,000 donation to
5 CPA from its federal account.”²³ Schock says that his “campaign staff made initial technical
6 attempts to assist the 18th District Committee in making the Committee’s contribution,” but that
7 neither he nor his staff directed the Committee’s contribution to CPA.²⁴ Schock also asserts that
8 he did not solicit the 18th District Committee’s contribution to CPA,²⁵ and he told OCE that he
9 has never requested that the 18th District Committee contribute to any political campaigns.²⁶
10 Rather, Schock says that Bigger told him that Bigger intended to make a donation to CPA from
11 the 18th District Committee.²⁷ Schock also states that although he did not solicit Bigger to make

²² OCE Mem. of Interview of Steve Shearer ¶ 18, OCE Report Ex. 12 at 12-9525_0106 (“Shearer MOI”).

²³ Schock MUR 6563 Resp. at 2. Schock’s Response did not further explain what he meant when he stated that he “learned” of the 18th District Committee’s plan to contribute to CPA. *See id.* The Commission’s Office of General Counsel offered Schock through counsel the opportunity to clarify his statement, if he wished to do so. *See* Letter from Mark Allen, FEC, to Robert K. Kelner, Counsel, Rep. Schock (Oct. 18, 2012). Schock chose to provide an additional response. *See* Schock MUR 6563 Supp. Resp.

²⁴ *See* Schock MUR 6733 Resp. at 2, 8.

²⁵ *See* Schock MUR 6563 Supp. Resp. at 1.

²⁶ Schock MOI ¶ 15.

²⁷ *See* Schock MUR 6563 Supp. Resp. at 1; *see also* Schock Letter to House Ethics at 3; Schock Letter to OCE at 4. Schock told OCE that he learned approximately ten days before Kinzinger’s primary election in March 2012 that the 18th District Committee contributed to CPA and that Bigger told him about the contribution. Schock MOI ¶¶ 19-20. Schock’s Chief of Staff told OCE that Bigger wanted to make a contribution to CPA from the 18th District Committee account and that Schock did not ask Bigger to contribute. Shearer MOI ¶¶ 20-21. Counsel for Schock contends that Bigger corroborated this account in a letter to House Ethics. Schock Letter to House Ethics at 3. According to OCE, Bigger’s counsel submitted a letter to OCE “suggesting that Mr. Bigger decided to contribute \$25,000 from [the] 18th District Republican Central Committee to CPA and then informed Representative Schock of the decision.” OCE Report at 16 n.68. OCE refused to consider this letter as evidence, *see id.*, and Bigger did not cooperate with the OCE investigation. *See id.* at 5-6, 16, 20-21.

1 the donation using 18th District Committee funds, he was pleased to hear that Bigger would be
2 doing so and he did not object.²⁸

3 Schock says that he assisted with establishing the 18th District Committee's federal
4 account and that he "helps raise funds for" the 18th District Committee's federal account through
5 his Victory Committee,²⁹ but does not hold any positions on the 18th District Committee and
6 does not have the authority to make decisions concerning how it spends its funds.³⁰

7 According to Schock, "[w]ith knowledge of the \$25,000 commitment from the 18th
8 District Committee, [he] reached out to Rep. Cantor to see if Rep. Cantor could raise additional
9 funds to support pro-Kinzingers ads by CPA."³¹ Schock was quoted in the press as stating to
10 Cantor: "I said, 'Look, I'm going to do \$25,000 [specifically] for the Kinzinger campaign for
11 the television campaign' and said, 'Can you match that?'" "And he said, 'Absolutely.'"³² In his
12 response, Schock acknowledges that he "said something along the lines of" this reported
13 statement.³³ Schock told OCE that he believed he said something like "We're doing \$25,000[;]
14 would you be able to do \$25,000[?]," that "We're doing \$25,000" referred to the 18th District

²⁸ See Schock MUR 6563 Supp. Resp. at 1-2.

²⁹ See Schock MOI ¶ 14; Schock MUR 6563 Resp. at 2.

³⁰ See Schock MUR 6563 Resp. at 2. The 18th District Committee filed its initial Statement of Organization with the Commission on February 25, 2011, and through March 31, 2012, disclosed total receipts of \$132,061.20, all but \$6.00 of which consisted of transfers from the Victory Committee. Prior to its \$25,000 contribution to CPA, the 18th District Committee had made no contributions to other federal committees and had disbursed to state candidates a total of \$7,500. See 18th Dist. Comm. 2012 April Quarterly Report at 4, 9 (Apr. 13, 2012) (disclosing one \$500 contribution to a state committee); 18th Dist. Comm. 2011 April Quarterly Report at 4, 9-11 (Apr. 7, 2011) (disclosing \$7,000 in contributions to state committees).

³¹ Schock MUR 6563 Resp. at 2.

³² See Stanton, *Cantor Gave \$25K*, *supra*. The bracketed term "[specifically]" appears in Schock's quote in the article. The article incorrectly reported that Schock's leadership PAC, GOP Generation Y Fund, contributed \$25,000 to CPA.

³³ Schock MUR 6563 Resp. at 2.

1 Committee's \$25,000 contribution to CPA, and that he referred to it as "we" because it was a
2 donation being made within his district.³⁴

3 ERICPAC contributed \$25,000 to CPA on March 16, 2012.³⁵ Cantor's campaign
4 spokesman reportedly stated that Cantor made the donation at the request of Schock; his
5 description of the exchange was quoted in a news article as follows: "On Thursday, March 15,
6 2012, Leader Cantor was asked by Congressman Schock to contribute to an organization that
7 was supporting Adam Kinzinger in the Illinois election of March 20. ERICPAC subsequently
8 made a contribution with the understanding that those funds would be used only in the effort to
9 support Congressman Kinzinger."³⁶

10 In addition to the ERICPAC and 18th District Committee \$25,000 contributions to CPA,
11 Schock was also involved in David Herro's \$35,000 contribution to CPA. Herro has organized
12 fundraisers for Schock, including during March 2012, the same month as Schock's contact with
13 Herro regarding a contribution to CPA.³⁷ Herro also contributed \$15,000 to Schock's Victory
14 Committee in 2010 and \$10,000 to the Committee in 2011.³⁸ Schock says that he contacted
15 Herro in March 2012 about contributing to CPA.³⁹ Schock and Herro each say that Schock
16 contacted Herro and told him that Kinzinger's election was close and asked Herro if he could

³⁴ Schock MOI ¶¶ 23-24.

³⁵ ERICPAC 2012 April Monthly Report at 74 (Apr. 20, 2012).

³⁶ Stanton, *Cantor Gave \$25K, supra*. Cantor described Schock's request in similar terms: Schock called Cantor and asked whether he would give \$25,000 to a super PAC operating in Illinois in connection with Kinzinger's race. See OCE Mem. of Interview of Cantor ¶ 8, OCE Report Ex. 8 at 12-9525_0087 ("Cantor MOI").

³⁷ See OCE Mem. of Interview of David Herro ¶¶ 4, 6, 9-13, OCE Report Ex. 18 at 12-9525_0124 ("Herro MOI"). The OCE Report refers to Herro as "Donor 1."

³⁸ See Victory Committee 2010 July Quarterly Report at 6; 2011 October Quarterly Report at 29.

³⁹ See Schock MOI ¶ 28.

1 help but did not suggest any amount.⁴⁰ Herro told Schock that he would help and that he would
2 attempt to have others help.⁴¹ Herro contributed \$35,000 to CPA on March 14, 2012, after
3 receiving information regarding CPA from Shearer, Schock's Chief of Staff,⁴² and from CPA,
4 including that CPA wanted to raise \$100,000 in three days.⁴³ Herro says he solicited three
5 individuals to contribute to CPA, one of whom, Anne Dias Griffin, contributed \$30,000 to CPA
6 on March 16, 2012.⁴⁴ Griffin acknowledges that Herro told her that he was contributing \$35,000
7 to CPA to support Kinzinger in his primary election.⁴⁵ Griffin and Schock each say that Schock
8 did not ask Griffin to contribute.⁴⁶

9 **C. Legal Analysis**

10 **1. Applicable Law**

11 The Act and Commission regulations prohibit federal candidates, federal officeholders,
12 agents acting on their behalf, and entities that are directly or indirectly established, financed,
13 maintained, controlled by, or acting on behalf of federal candidates or officeholders from
14 soliciting, receiving, directing, transferring, spending, or disbursing funds in connection with an

⁴⁰ *Id.* ¶¶ 29-30; Schock MUR 6733 Resp. at 3, 7; Herro MOI ¶¶ 9, 11. Schock also denies that his staff suggested, requested, or recommended any contribution amounts. *See* Schock Letter to OCE at 5.

⁴¹ *See* Herro MOI ¶ 10; Schock MOI ¶¶ 30-31.

⁴² Shearer says that he provided CPA's wire transfer information to Herro at Schock's request. *See* Shearer MOI ¶¶ 23, 25-26.

⁴³ *See* Herro MOI ¶¶ 12-16. The David Herro Trust (the "Trust") made the \$35,000 contribution to CPA. *See* CPA 2012 Amended April Monthly Report at 8. Herro explained that the Trust is his bank account and he is the sole member of the Trust. *See* Herro MOI ¶ 18.

⁴⁴ *See id.* ¶ 17; OCE Mem. of Interview of Anne Dias Griffin ¶¶ 7-8, OCE Report Ex. 20, 12-9525_0131 ("Griffin MOI"); CPA 2012 Amended April Monthly Report at 10. The OCE Report refers to Griffin as "Donor 2."

⁴⁵ *See* Griffin MOI ¶¶ 8-9.

⁴⁶ *See id.* ¶ 10; Schock MOI ¶ 32.

1 election for federal office, unless the funds are subject to the limitations, prohibitions, and
2 reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. §§ 300.60, 300.61.⁴⁷

3 Commission regulations define “to solicit” to mean:

4 to ask, request, or recommend, explicitly or implicitly, that another person
5 make a contribution, donation, transfer of funds, or otherwise provide
6 anything of value. A solicitation is an oral or written communication that,
7 construed as reasonably understood in the context in which it is made,
8 contains a clear message asking, requesting, or recommending that another
9 person make a contribution, donation, transfer of funds, or otherwise
10 provide anything of value. A solicitation may be made directly or
11 indirectly. The context includes the conduct of persons involved in the
12 communication. A solicitation does not include mere statements of
13 political support or mere guidance as to the applicability of a particular
14 law or regulation.

15
16 11 C.F.R. § 300.2(m). Commission regulations provide specific examples of solicitations as well
17 as statements that do not constitute solicitations. *Id.* § 300.2(m)(1)-(3). Commission regulations
18 define “to direct” to mean:

19 to guide, directly or indirectly, a person who has expressed an intent to
20 make a contribution, donation, transfer of funds, or otherwise provide
21 anything of value, by identifying a candidate, political committee or
22 organization, for the receipt of such funds, or things of value. The
23 contribution, donation, transfer, or thing of value may be made or
24 provided directly or through a conduit or intermediary. Direction does not
25 include merely providing information or guidance as to the applicability of
26 a particular law or regulation

27
28 11 C.F.R. § 300.2(n).

29 The Act limits contributions to non-authorized, non-party committees to \$5,000 in any
30 calendar year. 2 U.S.C. § 441a(a)(1)(C). The Act also prohibits any candidate or political

⁴⁷ Agents of federal candidates and officeholders are prohibited from engaging in these activities when “acting on behalf of a Federal candidate or individual holding Federal office.” 11 C.F.R. § 300.60(c). The Commission has defined an “agent” of a federal candidate or officeholder to be “any person who has actual authority, either express or implied,” “to solicit, receive, direct, transfer, or spend funds in connection with any election.” *Id.* § 300.2(b)(3).

1 committee from knowingly accepting any contribution in violation of section 441a. *Id.*

2 § 441a(f).

3 Following the decisions in *Citizens United v. FEC*⁴⁸ and *SpeechNow.org v. FEC*,⁴⁹ the
4 Commission concluded in Advisory Op. 2010-11 (Commonsense Ten) that individuals, political
5 committees, corporations, and labor organizations may make unlimited contributions to
6 independent expenditure-only political committees and that such committees may solicit
7 unlimited contributions from such persons. Thus, committees such as CPA that have registered
8 with the Commission may accept unlimited contributions from individuals, political committees,
9 corporations, and labor organizations.⁵⁰

10 Section 441i was upheld by the Supreme Court in *McConnell v. FEC*,⁵¹ and was not
11 disturbed by either *Citizens United* or *SpeechNow*. Accordingly, in Advisory Op. 2011-12
12 (Majority PAC), the Commission clarified that the solicitation restrictions under section 441i(e)
13 remain applicable to contributions solicited by federal candidates, officeholders, and other
14 covered persons after *Citizens United* and *SpeechNow.org*.⁵² Therefore, as set forth in
15 Section 441i(e), such persons may solicit for independent expenditure-only political committees
16 only contributions of \$5,000 or less.

⁴⁸ 558 U.S. 310 (2010).

⁴⁹ 599 F.3d 686 (D.C. Cir. 2010).

⁵⁰ See Letter from Jonathan Martin, CPA Treasurer, to FEC (Sept. 27, 2011) (notifying the Commission that CPA intends to make independent expenditures and will not use its funds to make contributions), *available at* <http://docquery.fec.gov/pdf/262/11030664262/11030664262.pdf>.

⁵¹ 540 U.S. 93, 181-184 (2003).

⁵² Advisory Op. 2011-12 at 4. *Cf.* Advisory Op. 2012-34 (Freedom PAC) (concluding that a principal campaign committee of a federal candidate may use campaign funds to make a contribution of \$10,000 or more to an independent-expenditure-only political committee).

2. There Is Reason to Believe Rep. Schock Solicited Contributions in Violation of Section 441i(e)

a. ERICPAC \$25,000 Contribution to CPA

A press article reports that Schock described his conversation with Cantor concerning a possible contribution to CPA as follows: "I said, 'Look, I'm going to do \$25,000 [specifically] for the Kinzinger campaign for the television campaign' and said, 'Can you match that?' And he said, 'Absolutely.'"⁵³ The MUR 6563 and MUR 6733 Complaints allege that Schock thus impermissibly solicited \$25,000 from Cantor.⁵⁴ Schock, in his Response, recognizes the Commission's conclusion in AO 2011-12 (Majority PAC) that federal officeholders remain subject to section 441i(e)'s prohibition on soliciting contributions outside the limitations and prohibitions of the Act, but asks that the Commission decide this matter on the "narrow ground" that his communication to Cantor was not a solicitation.⁵⁵ Schock's own description of events, however, indicates that he solicited a contribution from Cantor: "Rep. Schock reached out to Rep. Cantor to see if Rep. Cantor could raise additional funds to support pro-Kinzinger ads by CPA."⁵⁶ The act of reaching out to someone to see if they can raise funds satisfies the definition of "solicitation": Schock "ask[ed], request[ed], or recommend[ed]" that Cantor "make a contribution, donation, transfer of funds. . . ." See 11 C.F.R. § 300.2(m). Further, Cantor's spokesperson reportedly described the communication in terms of a direct solicitation:

⁵³ See Stanton, *Cantor Gave \$25K*, *supra*.

⁵⁴ Compl. at 1-2, 5, MUR 6563; Compl. at 2-4, MUR 6733.

⁵⁵ Schock MUR 6563 Resp. at 1, 4.

⁵⁶ *Id.* at 2.

1 “. . . Cantor *was asked* by Congressman Schock *to contribute* to an organization that was
2 supporting Adam Kinzinger in the Illinois election of March 20.”⁵⁷

3 Schock asserts in his response that he did not solicit a contribution from Cantor; rather,
4 he “asked whether Rep. Cantor could match a fundraising target of \$25,000.”⁵⁸ A request to
5 match a fundraising target, however, is by definition “request[ing] or recommend[ing]” that the
6 person “make a contribution, donation, transfer of funds. . . ,” and thus constitutes a solicitation.
7 *See, e.g.*, 11 C.F.R. § 300.2(m)(2)(v), (viii), (xiv) (“to solicit” includes variations such as
8 “Giving \$100,00 to Group X would be a very smart idea,” “Group X is having a fundraiser this
9 week; you should go,” and “Candidate says to a potential donor: ‘The money you will help us
10 raise will allow us to communicate our message to the voters through Labor Day.’”).

11 According to Schock, because he did not “ask, request or recommend” that Cantor make
12 a contribution from his own funds or from any particular committee he controlled, he did not
13 solicit Cantor under section 300.2(m).⁵⁹ Schock makes this argument even as he states that he
14 “was clearly asking Rep. Cantor to raise funds for CPA’s ads in support of Mr. Kinzinger, and he
15 said so directly.”⁶⁰ In essence, Schock’s argument appears to be that he did not solicit Cantor to
16 contribute himself, but rather that he asked Cantor to raise the contribution from another source.
17 The Commission’s definition of “to solicit,” however, would cover either situation: even

⁵⁷ Stanton, *Cantor Gave \$25K, supra* (emphasis added); *see* 11 C.F.R. § 300.2(m)(2)(i) (“to solicit” includes the statement “Please give \$100,000 to Group X.”). Other characterizations in the current record of Schock’s discussion with Cantor also satisfy the Commission’s definition of what constitutes a solicitation. *See* Schock MOI ¶ 23 (Schock stated that he does not remember exactly what he told Cantor but believes he said that, “We’re doing \$25,000[;] would you be able to do \$25,000[?]”); Cantor MOI ¶ 8 (Schock called Cantor and asked whether he would give \$25,000 to a super PAC operating in Illinois in connection with Kinzinger’s race).

⁵⁸ Schock MUR 6563 Resp. at 4.

⁵⁹ *Id.*

⁶⁰ *Id.* at 5.

1 assuming that asking Cantor if he could match a fundraising target is not a "direct" request for a
2 contribution, "to solicit" explicitly includes both direct and indirect requests.⁶¹ And neither the
3 language of the regulation nor the Commission's 2006 Explanation and Justification of the
4 regulation contain any requirement that the solicitor explicitly state the source of funds to be
5 used.⁶² Nor does Schock's statement to Cantor constitute a "mere statement of political
6 support," which the regulation excludes from its reach.⁶³ In sum, Schock's claim that he asked
7 Cantor to raise funds for CPA is a concession, not a denial, notwithstanding his characterization
8 of the request as related to fundraising targets. Accordingly, Schock "solicited" a contribution
9 within the meaning of the Act and regulations.

10 Schock also argues that if the Commission were to construe section 441i(e) to apply to
11 the Member-to-Member communication that is at issue here, doing so would violate the First
12 Amendment because no risk of corruption exists when, as happened here, one Member asks
13 another Member to "match a fundraising target," and the other Member does so by using funds
14 subject to the limitations and prohibitions of the Act.⁶⁴ No exception to section 441i(e) exists for
15 communications between officeholders. As for risk of corruption, the MUR 6563 Complaint
16 asserts how such a contribution could pose a threat of actual or at least apparent corruption:

17 Absent the solicitation restriction of section 441i(e)(1)(A), a federal
18 officeholder facing a difficult reelection contest could and predictably
19 would solicit enormous contributions to an [independent expenditure-only
20 committee] supporting that embattled officeholder from other Members of

⁶¹ See 11 C.F.R. § 300.2(m) ("A solicitation may be made directly or indirectly. . .").

⁶² See *id.*; Final Rules and Explanation and Justification for Definitions of "Solicit" and "Direct," 71 Fed. Reg. 13,926 (Mar. 20, 2006).

⁶³ See 11 C.F.R. § 300.2(m).

⁶⁴ Schock MUR 6563 Resp. at 5-7.

1 Congress sitting in safe electoral districts with large financial war chests
2 and no electoral competition. Where a Member responded to such a
3 solicitation by making such a contribution to the [independent
4 expenditure-only committee] supporting the embattled officeholder, that
5 officeholder would be beholden to the generous colleague just as the
6 embattled officeholder would be beholden to any other donor.⁶⁵
7

8 Nonetheless, even if the risk of corruption is less in the context of Member discussions, no
9 federal court has found that the provision violates the Constitution, and there is no basis for the
10 Commission to decline to enforce this provision where there is reason to believe the provision
11 was violated. In sum, the available information indicates that Schock solicited a \$25,000
12 contribution from Cantor.

13 b. 18th District Committee \$25,000 Contribution to CPA

14 The MUR 6733 Complaint alleges that Schock impermissibly solicited, and his campaign
15 staff impermissibly directed, a \$25,000 contribution to CPA from the 18th District Committee.⁶⁶
16 Schock denies that his staff directed the contribution, asserting that his staff's involvement in the
17 "mechanics of making the contribution" does not amount to "direction" under section 300.2(n) of
18 the Commission's regulations.⁶⁷ The Commission agrees that Schock's Chief of Staff, Shearer,
19 does not appear to have directed the contribution in that he did not provide the 18th District
20 Committee "with the identity of an appropriate recipient" after the Committee had "already
21 expressed an intent to make a contribution or donation, but lack[ed] the identity of an appropriate
22 candidate, political committee or organization to which to make that contribution or donation."⁶⁸

⁶⁵ Complaint at 4 n.2; MUR 6563.

⁶⁶ Complaint at 4, MUR 6733.

⁶⁷ Schock MUR 6733 Resp. at 8.

⁶⁸ Final Rules and Explanation and Justification for Definitions of "Solicit" and "Direct," 71 Fed. Reg. 13,926, 13,932 (Mar. 20, 2006).

1 Instead, the available information supports a finding of reason to believe that Schock solicited
2 the contribution from the 18th District Committee.

3 Schock acknowledges that his communication asking Cantor to contribute \$25,000 to
4 CPA, quoted as "I'm going to do \$25,000,"⁶⁹ referenced the 18th District Committee's \$25,000
5 contribution to CPA.⁷⁰ Schock's use of the pronoun "I" suggests a personal involvement in the
6 contribution such that Schock "ask[ed], request [ed] or recommend[ed]" that the 18th District
7 Committee make the contribution. *See* 11 C.F.R. § 300.2(m). Even framed as "We're doing
8 \$25,000," as Schock did in his OCE interview,⁷¹ suggests that Schock was involved in the
9 contribution.

10 Schock's likely involvement in the 18th District Committee contribution is also
11 supported by his other statements. Schock says that he sought to assist Kinzinger in his race
12 against Manzullo and believed that CPA needed additional funds to be able to air its anti-
13 Manzullo ads again prior to the election.⁷² Schock's quoted statements signify his personal and
14 direct involvement in the raising of contributions to CPA: "I was trying to do everything I could
15 to help the Kinzinger campaign and reached out to the committee that was running ads in support
16 of them" and "I asked if I could specify a donation to [CPA's television ads]."⁷³ Under these
17 circumstances, it seems unlikely that Schock would have solicited Cantor only after the 18th
18 District Committee independently contributed to CPA, without Schock asking, requesting, or

⁶⁹ *See Stanton, Cantor Gave \$25K, supra.*

⁷⁰ *See Schock MOI ¶ 24.*

⁷¹ *Id.*

⁷² Schock MUR 6563 Resp. at 2.

⁷³ *See Stanton, Cantor Gave \$25K, supra.*

1 recommending that the 18th District Committee make the contribution. *See* 11 C.F.R.
2 § 300.2(m).

3 Also supporting the inference that Schock solicited the 18th District Committee
4 contribution are the facts that Schock helped to establish the Committee's federal account,⁷⁴ that
5 he had provided over 95% of the Committee's receipts through his Victory Committee by the
6 time of the Committee's contribution, that it had not made a contribution to another federal
7 committee to date, and that its donations to nonfederal candidates totaled \$7,500 to date.⁷⁵ The
8 18th District Committee contributed \$25,000 to CPA, about 24% of its cash-on-hand. These
9 circumstances suggest that the 18th District Committee would not have made such a large
10 contribution — its first federal contribution — without a request from Schock, the individual
11 who provided nearly all of its funding.

12 Although the mechanics of the 18th District Committee contribution suggest control by
13 Schock — his Campaign Director originally made the contribution to CPA at the direction of his
14 Chief of Staff⁷⁶ — Schock asserts in his unsworn responses that he “learned that the 18th District
15 Republican Central Committee . . . was planning to make a \$25,000 donation to CPA from its
16 federal account,” and that he “was told by Mike Bigger, the Chairman of the 18th District
17 Committee . . . that Mr. Bigger intended to make a contribution to CPA from the 18th District

⁷⁴ *See* Schock MOI ¶ 14.

⁷⁵ *See* note 30, *supra*.

⁷⁶ *See* Hoerr MOI ¶ 10. As noted, the contribution was later replaced with a wire transfer by Bigger of the 18th District Committee. *See id.* ¶¶ 16-19.

1 Committee.”⁷⁷ Schock says he did not solicit the contribution and has never requested that the
2 18th District Committee contribute to any political campaign,⁷⁸ but his statements that he learned
3 that the Committee “was planning to” contribute to CPA and that Bigger told him that Bigger
4 “intended to” contribute do not foreclose Schock’s involvement in the contribution. Schock
5 asserts that he does not have the authority to make decisions concerning how the 18th District
6 Committee spends its funds,⁷⁹ but that also is not inconsistent with Schock asking the Committee
7 to make the \$25,000 contribution to CPA instead of making the Committee’s contribution
8 himself. The 18th District Committee itself says that it made the decision to make the \$25,000
9 contribution to CPA — which is also consistent with Schock soliciting the contributions — but is
10 silent as to how the contribution arose.⁸⁰

11 The circumstances here — that the 18th District Committee contribution arose in
12 connection with Schock’s desire to assist Kinzinger’s election, that Schock described the
13 contribution to Cantor in personal terms, that Schock’s staffer appeared to be the person who
14 physically made the original contribution, and that Schock’s Victory Committee had provided
15 nearly all of the funding for the 18th District Committee which had not previously made any
16 federal contribution — taken together with Schock’s general, unsworn denial, support a
17 reasonable inference that Schock asked, requested, or recommended that the 18th District

⁷⁷ Schock MUR 6563 Resp. at 2, Schock MUR 6563 Supp. Resp. at 1; *but see* Schock MOI ¶¶ 15, 19-20 (Schock stated that he did not solicit this contribution and learned from Bigger that it had been made approximately 10 days before the primary election).

⁷⁸ Schock MUR 6563 Supp. Resp. at 1; Schock MOI ¶ 15.

⁷⁹ Schock MUR 6563 Resp. at 2.

⁸⁰ 18th District Committee Resp. at 1, MUR 6733.

1 Committee contribute \$25,000 to CPA, thus soliciting the contribution. *See* 11 C.F.R.

2 § 300.2(m).

3 c. David Herro \$35,000 Contribution to CPA

4 The MUR 6733 Complaint alleges that Schock impermissibly solicited contributions
5 from Herro without limiting the amount to \$5,000 in permissible funds.⁸¹ As to the origin of the
6 contribution, Schock says that he contacted Herro in March 2012 about contributing to CPA.⁸²
7 Schock and Herro both acknowledge that Schock asked Herro if he would help with Kinzinger's
8 close election,⁸³ and a Schock staffer provided CPA's wire transfer information to Herro at
9 Schock's request.⁸⁴ Schock thereby solicited Herro for a contribution. *See* 11 C.F.R.
10 § 300.2(m).⁸⁵ Both Schock and Herro assert that Schock did not recommend a specific amount
11 to Herro,⁸⁶ who contributed \$35,000 to CPA on March 14, 2012.

12 Under section 441i(e), federal candidates and officeholders such as Schock may not
13 solicit funds in connection with an election for federal office unless the funds are subject to the
14 limitations, prohibitions, and reporting provisions of the Act. 2 U.S.C. § 441i(e)(1)(A);
15 11 C.F.R. § 300.61. The Act limits contributions to non-authorized, non-party committees to
16 \$5,000 in any calendar year. 2 U.S.C. § 441a(a)(1)(C). The Commission in AO 2011-12
17 (Majority PAC) thus concluded that federal candidates and officeholders "may not solicit

⁸¹ Compl. at 4, MUR 6733.

⁸² *See* Schock MOI ¶ 28.

⁸³ *See id.* ¶ 29; Schock MUR 6733 Resp. at 3, 7; Herro MOI ¶ 9.

⁸⁴ *See* Shearer MOI ¶¶ 23, 25-26.

⁸⁵ *See, e.g., id.* § 300.2(m)(2)(xiv) ("to solicit" includes statement "Candidate says to potential donor: 'The money you will help us raise will allow us to communicate our message to the voters through Labor Day.'").

⁸⁶ *See* Schock MOI ¶ 30; Schock MUR 6733 Resp. at 3, 7; Herro MOI ¶ 11.

1 unlimited contributions from individuals . . . on behalf of independent expenditure-only political
2 committees,” and that such officeholders and candidates “may only solicit contributions of up to
3 \$5,000 from individuals” for such committees.⁸⁷

4 The available information indicates that Schock did not solicit Herro for a contribution
5 subject to the applicable \$5,000 contribution limit. *See* 2 U.S.C. § 441a(a)(1)(C). Rather,
6 Schock made an open-ended request of Herro that resulted in a contribution seven times the
7 \$5,000 statutory limit. Schock also had reason to expect that Herro might contribute an amount
8 greater than \$5,000: Herro had contributed \$15,000 and \$10,000 in 2010 and 2011, respectively,
9 to Schock’s joint fundraiser committee, the Victory Committee.⁸⁸ Further, Schock’s other
10 solicitations for contributions to CPA were well above \$5,000: Schock acknowledges that he
11 said to Cantor “something along the lines of” his reported request to Cantor, “Look, I’m going to
12 do \$25,000 [specifically] for the Kinzinger campaign for the television campaign . . . Can you
13 match that?”⁸⁹

14 Schock asserts in his Response to the MUR 6733 Complaint that “[a] conversation about
15 the general need to raise funds to support a candidate, where no specific donation amounts are

⁸⁷ Advisory Op. 2011-12 at 3-4. The Commission added, in responding to the Requester’s question regarding federal candidate and officeholder participation in fundraisers for independent-expenditure-only political committees, that — as stated in the Commission’s regulations:

a Federal candidate or officeholder may not solicit any funds that are not “subject to the limitations, prohibitions, and reporting requirements of the Act.” 11 CFR 300.61. Rather, a Federal candidate or officeholder who solicits funds at such an event must limit any solicitation “to funds that comply with the amount limitations and source prohibitions of the Act.” 11 CFR 300.64(b)(2).

Id. at 5. Section 300.64 of the Commission’s regulations implements section 441i(e)(3) of the Act regarding federal candidate and officeholder attendance at fundraising events for State, district and local political party committees; at such events, federal candidates and officeholders remain subject to the provisions of section 441i(e)(1). *See Shays v. FEC*, 528 F.3d 914, 933-34 (D.C. Cir. 2008).

⁸⁸ *See* Victory Committee 2010 July Quarterly Report at 6; 2011 October Quarterly Report at 29.

⁸⁹ *See* Schock MUR 6563 Resp. at 2; Stanton, *Cantor Gave \$25K*, *supra*.

1 discussed or anticipated, simply does not fall under restrictions found in § 441i(e).”⁹⁰ Schock
2 cites no authority for this assertion, however, and does not address the prohibition on Schock
3 soliciting funds “unless the funds are subject to the limitations . . . of this Act.” *See* 2 U.S.C.
4 § 441i(e)(1)(A). *Cf.* 11 C.F.R. § 300.64(b)(2) (under section 441i(e)(1) and (3), a federal
5 candidate or officeholder may solicit funds at a non-federal fundraising event, provided that the
6 solicitation is limited to funds that comply with the amount limitations and source prohibitions of
7 the Act and are consistent with State law).

8 In sum, it appears that Schock did not limit his solicitation of Herro to funds that
9 complied with the Act’s \$5,000 limitation as required by section 441i(e). *See* 2 U.S.C.
10 §§ 441i(e)(1)(A), 441a(a)(1)(C).

11 d. There Is Reason to Believe that Schock Violated Section 441i(e)

12 Section 441i(e)(1)(A) prohibits federal candidates and officeholders like Schock from
13 soliciting contributions outside the Act’s limitations and prohibitions. The Commission affirmed
14 in AO 2011-12 (Majority PAC) that this provision continues to apply where the officeholder
15 solicits an individual or a federal political action committee for an amount greater than \$5,000,
16 *see* 2 U.S.C. § 441a(a)(1)(C), even though those persons may permissibly contribute an
17 unlimited amount to an independent-expenditure-only committee. In light of the foregoing
18 information and analysis, the Commission finds reason to believe that Schock violated 2 U.S.C.
19 § 441i(e) in connection with the ERICPAC and 18th District Committee \$25,000 contributions to
20 CPA and the Herro \$35,000 contribution to CPA.

⁹⁰ Schock MUR 6733 Resp. at 7.

3. There Is No Reason to Believe Rep. Schock Made an Excessive Contribution

As for the allegation that Schock himself made an excessive contribution, the available information does not indicate that Schock himself made any contribution. Accordingly, the Commission finds no reason to believe that Rep. Schock violated 2 U.S.C. § 441a(a).

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1 **FEDERAL ELECTION COMMISSION**

2
3 RESPONDENT: Representative Rodney Davis MUR 6733

4
5 **FACTUAL AND LEGAL ANALYSIS**

6 **I. INTRODUCTION**

7 This matter was generated by a Complaint filed with the Federal Election Commission by
8 Eva Jehle, alleging violations of the Federal Election Campaign Act of 1971, as amended, ("the
9 Act") by Respondent.

10 **II. FACTUAL AND LEGAL ANALYSIS**

11 **A. Background**

12 The Complaint in this matter alleges that Representative Rodney Davis (13th District,
13 Illinois), at the time a congressional staffer,¹ impermissibly participated in the solicitation,
14 direction, and receipt of contributions to an independent-expenditure-only political committee,
15 Campaign for Primary Accountability Inc. ("CPA"), in violation of the Act.

16 The Complaint makes allegations based on an investigative report that the Office of
17 Congressional Ethics ("OCE" and the "OCE Report") submitted to the House of Representatives
18 Committee on Ethics ("House Ethics").²

19

¹ The Complaint identifies Davis as Chief of Staff for Representative John Shimkus (15th District, Illinois).

² See Compl. at 2, Attach. A (May 1, 2013); OCE Review No. 12-9525, adopted Aug. 24, 2012, *available at* <http://ethics.house.gov/sites/ethics.house.gov/files/OCE%20Report%20Rep.%20Schock.pdf>. On February 6, 2013, OCE publicly released its report that it referred to House Ethics on August 30, 2012. See FEBRUARY 6, 2013—OCE REFERRAL REGARDING REP. AARON SCHOCK, *available at* <http://oce.house.gov/2013/02/february-6-2013---oce-referral-regarding-rep-aaron-schock.html>.

1 Rodney Davis responds that the Complaint does not contain any factual allegations that
2 he solicited or directed any contributions in violation of the Act, and that the Commission should
3 dismiss the Complaint against him.³

4 Based on the available information, the Commission finds no reason to believe that Davis
5 violated 2 U.S.C. § 441i(e).

6 **B. Factual Summary**

7 Representatives Adam Kinzinger and Don Manzullo were candidates in the Illinois 16th
8 Congressional District primary election held on March 20, 2012. Information in the
9 Commission's possession indicates that Representative Aaron Schock (18th District, Illinois)
10 supported Kinzinger and sought to assist him. Further information indicates that Schock learned
11 that CPA was broadcasting advertisements opposing Manzullo and believed that CPA needed
12 additional funds to be able to air the advertisements again prior to the election. Schock's first-
13 person description of relevant events was quoted in a press article:

14 "The final week of the campaign, it got very tight, it was neck and neck. I
15 was trying to do everything I could to help the Kinzinger campaign and
16 reached out to the committee that was running ads in support of them."
17

18 "They were basically running the television ads for him, [and] I asked if I
19 could specify a donation to them," to be used only in the Illinois primary.
20

21 "And they said I could."⁴
22
23

³ Davis Resp. at 1-2, 4 (June 27, 2013).

⁴ John Stanton, *Eric Cantor Gave \$25K to Anti-Incumbent PAC to Aid Adam Kinzinger*, ROLL CALL, Apr. 6, 2012, available at http://www.rollcall.com/news/Eric_Cantor_Gave_Money_to_Super_PAC_to_Aid_Adam_Kinzinger-213651-1.html [hereinafter Stanton, *Cantor Gave \$25K*] (alteration in original).

1 Rodney Davis responds that the Complaint does not contain any factual allegations that
2 he solicited or directed any contributions in violation of the Act, and that the Commission should
3 dismiss the Complaint against him.³

4 Based on the available information, the Commission finds no reason to believe that Davis
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17
18 "They were basically running the television ads for him, [and] I asked if I
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20
21 "And they said I could."⁴
22
23

³ Davis Resp. at 1-2, 4 (June 27, 2013).

⁴ John Stanton, *Eric Cantor Gave \$25K to Anti-Incumbent PAC to Aid Adam Kinzinger*, ROLL CALL, Apr. 6, 2012, available at http://www.rollcall.com/news/Eric_Cantor_Gave_Money_to_Super_PAC_to_Aid_Adam_Kinzinger-213651-1.html [hereinafter Stanton, *Cantor Gave \$25K*] (alteration in original).

CPA personnel state that Davis was the contact person for the following contributions that CPA received for the Kinzinger race:⁵

Contributor	Amount	Date Received ⁶
David Herro Trust	\$35,000.00	March 14, 2012
ERICPAC ⁷	\$25,000.00	March 15, 2012
18th District Committee	\$25,000.00	March 16, 2012
Anne Dias Griffin	\$30,000.00	March 16, 2012
American College of Radiology Assn PAC	\$5,000.00	March 22, 2012 ⁸
TOTAL	\$120,000.00	

CPA Managing Director Jamie Story states that in March 2012, CPA Co-Chairman Eric O'Keefe told her to call Davis because he knew of individuals who would contribute to CPA's efforts in Kinzinger's election.⁹ Story further states that she provided Davis with wiring instructions for contributions and that she did not ask Davis for contributions or a specific

⁵ See OCE Mem. of Interview of CPA Managing Director (Jamie Story) ¶ 12, OCE Report Ex. 4 at 12-9525_0021 ("Story MOI"); OCE Mem. of Interview of CPA Development Coordinator (Hannah Christian) ¶ 26, OCE Report Ex. 6 at 12-9525_0028 ("Christian MOI"). The OCE Report usually refers to CPA's Managing Director and Development Coordinator by their positions rather than their names, but they are identified in each other's interviews. See Story MOI ¶¶ 2, 6; Christian MOI ¶¶ 2, 6.

⁶ See CPA 2012 Amended April Monthly Report at 6, 8-10 (July 23, 2012).

⁷ Every Republican Is Crucial (ERICPAC) is the leadership PAC of Representative Eric Cantor, who is referred to in the OCE Report at "Representative 1." See OCE Mem. of Interview of Representative 1, Ex. 8 at 12-9525_0086.

⁸ The OCE Report contains information about this contribution but it is not the subject of any allegations in the Complaint and does not otherwise appear to be the subject of any violations of the Act. See OCE Mem. of Interview of Lobbyist Donor 1 (Ted Burnes), OCE Report Ex. 21 at 12-9525_0133 ("Burnes MOI").

⁹ See Story MOI ¶¶ 5, 12.

1 amount of money.¹⁰ CPA Development Coordinator Hannah Christian states that to her
2 knowledge no one from CPA requested the contributions from these individuals and entities.¹¹
3 Christian also states that she contacted Davis to get the complete contact information for these
4 donors who made contributions by wire transfer and was supposed to let Davis know when CPA
5 received the wire transfer and when CPA made the media buys.¹² Story says that Davis wanted
6 confirmation that CPA spent \$100,000 on Kinzinger's race.¹³ In an e-mail to Story on March 16,
7 2012, Davis, using his "volunteersforshimkus.org" address, asked for confirmation that CPA
8 spent "at least \$100,000 . . . on Rockford [Illinois] TV and any cable outlets you have added."¹⁴

9 CPA aired and distributed independent expenditure advertisements opposing Manzullo
10 totaling \$239,531.68, all during the period March 8-19, 2012. The only expenditures for
11 television advertising — in the amounts of \$15,000, \$25,000, and \$35,000 respectively — all
12 occurred on March 16 or 17, 2012, after or on the same day as the contributions at issue in this
13

¹⁰ *Id.* ¶¶ 12-13.

¹¹ *See* Christian MOI ¶ 26.

¹² *Id.* ¶ 25.

¹³ *See* Story MOI ¶ 18.

¹⁴ E-mail from Rodney Davis to Jamie Story (Mar. 16, 2012 02:27 PM CDT), OCE Report Ex. 5 at 12-9525_024 ("Davis E-mail to Story"). The e-mail reads "Jamie, the \$25k echeck yesterday was rescinded, and the money was wired today from the 18th Congressional District PAC. That puts you at \$90,000 already wired. \$10,000 more may have been wired today from Canning, but I am not sure there. Have John get me a copy of the buy that shows at least \$100,000 being spent on Rockford TV and any cable outlets you have added. Thx." *Id.* CPA did not disclose the receipt of a contribution from "Canning," and Story says she did not have any knowledge of such an individual. *See* Story MOI ¶ 17. "John" appears to refer to CPA's "head Republican strategist" referenced in an e-mail from Story to Davis. E-mail from Jamie Story to Rodney Davis (Mar. 14, 2012 01:20 PM CDT), OCE Report Ex. 14 at 12-9525_0115.

1 matter.¹⁵ CPA's television advertisement is described in an e-mail from Rob Collins, Cantor's
2 former Chief of Staff, as "the ad that Shimkus, Schock and Cantor have sent money in to support
3 that the Campaign for Primary Accountability is running."¹⁶

4 As to the 18th District Committee contribution, the available information indicates that
5 Schock's Campaign Director, Tania Hoerr, made the contribution on the 18th District Committee
6 account at the direction of Schock's Chief of Staff, Steve Shearer.¹⁷ Hoerr says that she:

- 7 • had the necessary banking information to make the online contribution because she
8 established the 18th District Committee account and routinely deposits money into its
9 account from Schock's joint fundraising committee, Schock Victory Committee
10 ("Victory Committee");¹⁸
 - 11 • did not recall needing to get approval from anyone other than Shearer in order to make
12 the contribution, and did not recall speaking to 18th District Committee Chairman Mike
13 Bigger prior to making the contribution;¹⁹
 - 14 • was not sure why Bigger did not make the contribution online himself;²⁰
- 15
16
17

¹⁵ See CPA 2012 Amended April Monthly Report at 38; CPA 24/48 Hour Notice of Independent Expenditures (Mar. 19, 2012). CPA also disclosed an \$18,000 independent expenditure on the same date, March 17, 2012, to the same vendor for a radio advertisement, the only radio communication among CPA's independent expenditures opposing Manzullo. See *id.* at 39.

¹⁶ E-mail from Rob Collins to Ted Burnes (Mar. 15, 2012 10:24 AM), OCE Report Ex. 23 at 12-9525_0140. Rob Collins is a partner with the political strategy firm Purple Strategies LLC, and Ted Burnes is Director of American College of Radiology PAC and Political Education. See OCE Report at 10; Burnes MOI ¶¶ 2, 12.

¹⁷ See OCE Mem. of Interview of Tania Hoerr ¶¶ 3, 10, OCE Report Ex. 11 at 12-9525_0100 ("Hoerr MOI"). The OCE Report generally refers to Hoerr and Shearer by position rather than name, but they are identified in the Memoranda of Interviews of other witnesses. See, e.g., Christian MOI ¶ 19; Hoerr MOI ¶ 6. Hoerr is Schock's sister. See OCE Report at 15 n.62.

¹⁸ See Hoerr MOI ¶ 12. The Victory Committee amended its Statement of Organization on March 9, 2011, to add the 18th District Committee as a participating committee along with Schock for Congress (Schock's principal campaign committee), GOP Generation Y Fund (Schock's leadership PAC), and the National Republican Congressional Committee.

¹⁹ *Id.* ¶ 13.

²⁰ *Id.* ¶ 15.

- did not speak to Schock at that time about the contribution and did not recall if Shearer told her if anyone requested that the contribution be made;²¹ and
- learned from CPA that it would take a significant amount of time to process the online contribution she made, and that Shearer contacted Bigger for him to make the contribution from the 18th District Committee via a wire transfer.²²

The online contribution was duly rescinded and replaced by a wire transfer from the 18th District Committee.²³ Davis informed CPA of the replacement by e-mail.²⁴ Shearer says that Bigger contacted him to ask for the wire transfer information after Bigger and Schock had a conversation about eight or nine days prior to the Kinzinger primary election.²⁵

The available information indicates that Schock, with knowledge of the \$25,000 commitment from the 18th District Committee, reached out to Rep. Cantor to see if Rep. Cantor could raise additional funds to support pro-Kinzinger ads by CPA. Schock was quoted in the press as stating to Cantor: "I said, 'Look, I'm going to do \$25,000 [specifically] for the Kinzinger campaign for the television campaign' and said, 'Can you match that?'" "And he said, 'Absolutely.'"²⁶

²¹ *Id.* ¶ 14.

²² *Id.* ¶¶ 16-19. According to Story, Davis put her in contact with someone at the 18th District Committee who wired the contribution to CPA. See Story MOI ¶ 15.

²³ See Hoerr MOI ¶ 19; Story MOI ¶¶ 14-15.

²⁴ See Davis E-mail to Story, *supra*.

²⁵ OCE Mem. of Interview of Steve Shearer ¶ 18, OCE Report Ex. 12 at 12-9525_0106 ("Shearer MOI").

²⁶ See Stanton, *Cantor Gave \$25K*, *supra* (alteration in original). The bracketed term "[specifically]" appears in Schock's quote in the article. The article incorrectly reported that Schock's leadership PAC, GOP Generation Y Fund, contributed \$25,000 to CPA.

1 ERICPAC contributed \$25,000 to CPA on March 16, 2012.²⁷ Cantor's campaign
2 spokesman reportedly stated that Cantor made the donation at the request of Schock; his
3 description of the exchange was quoted in a news article as follows: "On Thursday, March 15,
4 2012, Leader Cantor was asked by Congressman Schock to contribute to an organization that
5 was supporting Adam Kinzinger in the Illinois election of March 20. ERICPAC subsequently
6 made a contribution with the understanding that those funds would be used only in the effort to
7 support Congressman Kinzinger."²⁸

8 As to David Herro's \$35,000 contribution to CPA, Herro and Schock each say that
9 Schock contacted Herro and told him that Kinzinger's election was close and asked Herro if he
10 could help but did not suggest any amount.²⁹ Herro told Schock that he would help and that he
11 would attempt to have others help.³⁰ Herro contributed \$35,000 to CPA on March 14, 2012,
12 after receiving information regarding CPA from Shearer, Schock's Chief of Staff,³¹ and from
13 CPA, including that CPA wanted to raise \$100,000 in three days.³² Herro says he solicited three
14 individuals to contribute to CPA, one of whom, Anne Dias Griffin, contributed \$30,000 to CPA

²⁷ ERICPAC 2012 April Monthly Report at 74 (Apr. 20, 2012).

²⁸ Stanton, *Cantor Gave \$25K*, *supra*.

²⁹ See OCE Mem. of Interview of Schock ¶¶ 28-30, OCE Report, Ex. 9 at 12-9525_0092 ("Schock MOI"); OCE Mem. of Interview of David Herro ¶¶ 9, 11, OCE Report Ex. 18 at 12-9525_0125 ("Herro MOI"). The OCE Report refers to Herro as "Donor 1."

³⁰ See Herro MOI ¶ 10; Schock MOI ¶¶ 30-31.

³¹ Shearer says that he provided CPA's wire transfer information to Herro at Schock's request. See Shearer MOI ¶¶ 23, 25-26.

³² See Herro MOI ¶¶ 12-16. The David Herro Trust (the "Trust") made the \$35,000 contribution to CPA. See CPA 2012 Amended April Monthly Report at 8. Herro explained that the Trust is his bank account and he is the sole member of the Trust. See Herro MOI ¶ 18.

1 on March 16, 2012.³³ Griffin acknowledges that Herro told her that he was contributing \$35,000
2 to CPA to support Kinzinger in his primary election.³⁴ Griffin and Herro each say they did not
3 discuss their contributions with Davis.³⁵

4 C. Legal Analysis

5 1. Applicable Law

6 The Act and Commission regulations prohibit federal candidates, federal officeholders,
7 agents acting on their behalf, and entities that are directly or indirectly established, financed,
8 maintained, controlled by, or acting on behalf of federal candidates or officeholders from
9 soliciting, receiving, directing, transferring, spending, or disbursing funds in connection with an
10 election for federal office, unless the funds are subject to the limitations, prohibitions, and
11 reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. §§ 300.60, 300.61.³⁶

12 Commission regulations define “to solicit” to mean:

13 to ask, request, or recommend, explicitly or implicitly, that another person
14 make a contribution, donation, transfer of funds, or otherwise provide
15 anything of value. A solicitation is an oral or written communication that,
16 construed as reasonably understood in the context in which it is made,
17 contains a clear message asking, requesting, or recommending that another
18 person make a contribution, donation, transfer of funds, or otherwise
19 provide anything of value. A solicitation may be made directly or
20 indirectly. The context includes the conduct of persons involved in the
21 communication. A solicitation does not include mere statements of

³³ See *id.* ¶ 17; OCE Mem. of Interview of Anne Dias Griffin ¶¶ 7-8, OCE Report Ex. 20, 12-9525_0131 (“Griffin MOI”); CPA 2012 Amended April Monthly Report at 10. The OCE Report refers to Griffin as “Donor 2.”

³⁴ See Griffin MOI ¶¶ 8-9.

³⁵ See Griffin MOI ¶ 10; Herro MOI ¶ 19.

³⁶ Agents of federal candidates and officeholders are prohibited from engaging in these activities when “acting on behalf of a Federal candidate or individual holding Federal office.” 11 C.F.R. § 300.60(c). The Commission has defined an “agent” of a federal candidate or officeholder to be “any person who has actual authority, either express or implied,” “to solicit, receive, direct, transfer, or spend funds in connection with any election.” *Id.* § 300.2(b)(3).

1 political support or mere guidance as to the applicability of a particular
2 law or regulation.
3

4 11 C.F.R. § 300.2(m). Commission regulations provide specific examples of solicitations as well
5 as statements that do not constitute solicitations: *Id.* § 300.2(m)(1)-(3). Commission regulations
6 define “to direct” to mean:

7 to guide, directly or indirectly, a person who has expressed an intent to
8 make a contribution, donation, transfer of funds, or otherwise provide
9 anything of value, by identifying a candidate, political committee or
10 organization, for the receipt of such funds, or things of value. The
11 contribution, donation, transfer, or thing of value may be made or
12 provided directly or through a conduit or intermediary. Direction does not
13 include merely providing information or guidance as to the applicability of
14 a particular law or regulation
15

16 11 C.F.R. § 300.2(n).

17 The Act limits contributions to non-authorized, non-party committees to \$5,000 in any
18 calendar year. 2 U.S.C. § 441a(a)(1)(C). The Act also prohibits any candidate or political
19 committee from knowingly accepting any contribution in violation of section 441a. *Id.*
20 § 441a(f).

21 Following the decisions in *Citizens United v. FEC*³⁷ and *SpeechNow.org v. FEC*,³⁸ the
22 Commission concluded in Advisory Op. 2010-11 (Commonsense Ten) that individuals, political
23 committees, corporations, and labor organizations may make unlimited contributions to
24 independent expenditure-only political committees and that such committees may solicit
25 unlimited contributions from such persons. Thus, committees such as CPA that have registered

³⁷ 558 U.S. 310 (2010).

³⁸ 599 F.3d 686 (D.C. Cir. 2010).

1 with the Commission may accept unlimited contributions from individuals, political committees,
2 corporations, and labor organizations.³⁹

3 Section 441i was upheld by the Supreme Court in *McConnell v. FEC*,⁴⁰ and was not
4 disturbed by either *Citizens United* or *SpeechNow*. Accordingly, in Advisory Op. 2011-12
5 (Majority PAC), the Commission clarified that the solicitation restrictions under section 441i(e)
6 remain applicable to contributions solicited by federal candidates, officeholders, and other
7 covered persons after *Citizens United* and *SpeechNow.org*.⁴¹ Therefore, as set forth in
8 Section 441i(e), such persons may solicit for independent expenditure-only political committees
9 only contributions of \$5,000 or less.

10 2. There Is No Reason to Believe Rep. Davis Violated Section 441i(e)
11

12 The Complaint alleges that Davis impermissibly participated in the solicitation, direction
13 and receipt of the contributions in excess of \$5,000 from ERICPAC, the 18th District
14 Committee, David Herro, and Anne Dias Griffin.⁴² See 2 U.S.C. §§ 441a(a), 441i(e). Davis was
15 not a federal candidate or officeholder at the time of the activity in this matter, but the
16 prohibitions of section 441i(e) apply as well to agents of federal candidates and officeholders.
17 See *id.* § 441i(e)(1); 11 C.F.R. §§ 300.60, 300.61.⁴³

³⁹ See Letter from Jonathan Martin, CPA Treasurer, to FEC (Sept. 27, 2011) (notifying the Commission that CPA intends to make independent expenditures and will not use its funds to make contributions), available at <http://docquery.fec.gov/pdf/262/11030664262/11030664262.pdf>.

⁴⁰ 540 U.S. 93, 181-184 (2003).

⁴¹ Advisory Op. 2011-12 at 4. Cf. Advisory Op. 2012-34 (Freedom PAC) (concluding that a principal campaign committee of a federal candidate may use campaign funds to make a contribution of \$10,000 or more to an independent-expenditure-only political committee).

⁴² Compl. at 2-4.

⁴³ Agents of federal candidates and officeholders are prohibited from engaging in these activities when "acting on behalf of a Federal candidate or individual holding Federal office." 11 C.F.R. § 300.60(c).

1 The Complaint identifies Davis as Chief of Staff for Rep. John Shimkus at the time of the
2 events in this matter.⁴⁴ Schock's Chief of Staff Shearer describes Davis as the executive director
3 of the Illinois State Republican Party, "number two" at Shimkus's district office, and a "senior
4 campaign person" working for Shimkus's campaign.⁴⁵

5 The Commission defines "agent" in its regulations implementing section 441i(e) as any
6 person who has actual authority, either express or implied, to engage in soliciting, receiving,
7 directing, transferring or spending funds in connection with any election on behalf of a federal
8 candidate or officeholder. 11 C.F.R. § 300.2(b)(3). As a paid "senior campaign person" for
9 Shimkus who used the campaign's "volunteersforshimkus.org" e-mail address,⁴⁶ Davis appears
10 to have been an agent of Shimkus and covered by section 441i(e).⁴⁷

11 The available information indicates that Davis helped facilitate the contributions in this
12 matter. CPA personnel state that Davis was the contact person for these contributions and Davis
13 communicated with CPA regarding the overall purpose of the contributions.⁴⁸ Davis also

⁴⁴ Compl. at 2.

⁴⁵ See Shearer MOI ¶ 13. Shimkus's principal campaign committee, Volunteers for Shimkus, paid Davis \$3,051.00 every two weeks during the 2012 election cycle from February 2011 through May 2012 for "Administrative/Salary/Overall: Payroll." See, e.g., Volunteers for Shimkus 2012 Amended April Quarterly at 62, 79 (March 2 and March 16, 2012, payments to Davis). Other information identifies Davis as "Project & Grants Coordinator" at Shimkus's office in Springfield, Illinois. See CONG. YELLOW BOOK, Fall 2012, at 707. The OCE Report identifies Davis as the Budget Director for Shimkus. OCE Report at 18.

⁴⁶ See, e.g., Davis E-mail to Story, *supra*.

⁴⁷ Shimkus is identified in an e-mail, along with Schock and Cantor, as having "sent money in to support [the ad] that the Campaign for Primary Accountability is running," although it is not clear which contribution(s) to CPA are referred to here. See e-mail from Rob Collins to Ted Burnes (Mar. 15, 2012 10:24 AM), OCE Report Ex. 23 at 12-9525_0140; *supra* note 20.

⁴⁸ See *supra* at 3 & note 18.

1 forwarded to the chiefs of staff for Schock and Shimkus a CPA prospectus and instructions for
2 wiring and online contributions.⁴⁹

3 The available information, however, does not suggest that Davis solicited, directed,
4 received, transferred, spent, or disbursed the contributed funds. Davis does not appear to have
5 asked any of the contributors to give to CPA or identified CPA to persons who had already
6 expressed an intent to make a contribution but lacked the identity of an appropriate political
7 committee to which to make that contribution.⁵⁰ See 11 C.F.R. § 300.2(m) (to solicit) and (n) (to
8 direct). Neither does Davis appear to have received the funds contributed to CPA; the available
9 information suggests that contributors forwarded the funds directly to CPA.

10 Accordingly, the Commission finds no reason to believe that Rodney Davis violated
11 2 U.S.C. § 441i(e).

⁴⁹ See E-mail from Rodney Davis to Steve Shearer & Craig Roberts (Mar. 14, 2012 02:49 PM CDT), OCE Report Ex. 14 at 12-9525_0115; see also CONG. YELLOW BOOK, Fall 2012, at 706 (identifying Roberts as Shimkus's Chief of Staff).

⁵⁰ See Final Rules and Explanation and Justification for Definitions of "Solicit" and "Direct," 71 Fed. Reg. 13,926, 13,932 (Mar. 20, 2006).

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FEDERAL ELECTION COMMISSION

RESPONDENT: Representative Eric Cantor MURs 6563 and 6733
Every Republican Is Crucial (ERICPAC)
and Melinda Fowler Allen in her official
capacity as treasurer

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FACTUAL AND LEGAL ANALYSIS

I. INTRODUCTION

These matters were generated by Complaints filed with the Federal Election Commission by the Campaign Legal Center and Democracy 21 in MUR 6563 and by Eva Jehle in MUR 6733, alleging violations of the Federal Election Campaign Act of 1971, as amended, ("the Act") by Respondents.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

The Complaints in MURs 6563 and 6733 allege that Representative Eric Cantor (7th District, Virginia) and Every Republican Is Crucial (ERICPAC), Cantor's leadership PAC, made a \$25,000 contribution solicited by Representative Aaron Schock (18th District, Illinois) to an independent-expenditure-only political committee, Campaign for Primary Accountability Inc. ("CPA"), in violation of the Act.

The Complaint in MUR 6733 makes allegations based on an investigative report that the Office of Congressional Ethics ("OCE" and the "OCE Report") submitted to the House of Representatives Committee on Ethics ("House Ethics").¹

¹ See Compl. at 2, Attach. A, MUR 6733 (May 1, 2013); OCE Review No. 12-9525, adopted Aug. 24, 2012, available at <http://ethics.house.gov/sites/ethics.house.gov/files/OCE%20Report%20Rep.%20Schock.pdf>. On February 6, 2013, OCE publicly released its report that it referred to House Ethics on August 30, 2012. See FEBRUARY 6, 2013—OCE REFERRAL REGARDING REP. AARON SCHOCK, available at <http://oce.house.gov/2013/02/february-6-2013---oce-referral-regarding-rep-aaron-schock.html>.

1 ERICPAC and Cantor respond that the Complaints do not contain any allegation of
2 wrongdoing by them, that Cantor did not solicit any improper contributions, and that because all
3 of ERICPAC's funds comply with the limitations, prohibitions, and reporting requirements of the
4 Act, it made a lawful donation to CPA.² ERICPAC further asserts that it properly disclosed its
5 contribution to CPA in its report filed with the FEC.³ Consequently, ERICPAC and Cantor state
6 that they should be dismissed as Respondents in these MURs.⁴

7 Based on the available information, the Commission finds no reason to believe that
8 ERICPAC or Cantor made an excessive contribution. *See* 2 U.S.C. § 441a(a).

9 **B. Factual Summary**

10 Representatives Adam Kinzinger and Don Manzullo were candidates in the Illinois 16th
11 Congressional District primary election held on March 20, 2012. Information in the
12 Commission's possession indicates that Schock supported Kinzinger and sought to assist him.
13 Further information indicates that Schock learned that CPA was broadcasting advertisements
14 opposing Manzullo and believed that CPA needed additional funds to be able to air the
15 advertisements again prior to the election. Schock's first-person description of relevant events
16 was quoted in a press article cited in the MUR 6563 Complaint:

17 "The final week of the campaign, it got very tight, it was neck and neck. I
18 was trying to do everything I could to help the Kinzinger campaign and
19 reached out to the committee that was running ads in support of them."
20

² ERICPAC Resp. at 1-6 (June 12, 2012), MUR 6563; Cantor Resp. at 1-2 (June 11, 2013), MUR 6563; ERICPAC and Cantor Resp. at 1-5 (June 17, 2013), MUR 6733.

³ ERICPAC Resp. at 4, MUR 6563; ERICPAC and Cantor Resp. at 5, MUR 6733.

⁴ ERICPAC Resp. at 4, 6, MUR 6563; Cantor Resp. at 1-3, MUR 6563; ERICPAC and Cantor Resp. at 3-4, MUR 6733.

1 "They were basically running the television ads for him, [and] I asked if I
2 could specify a donation to them," to be used only in the Illinois primary.

3
4 "And they said I could."⁵

5
6 CPA personnel state that Rodney Davis, then a staffer for Representative John Shimkus
7 (15th District, Illinois),⁶ was the contact person for the \$25,000 ERICPAC contribution that CPA
8 received on March 15, 2012, for the Kinzinger race.⁷ CPA Development Coordinator Hannah
9 Christian states that she contacted Davis to get the complete contact information for the donors
10 who made contributions by wire transfer and was supposed to let Davis know when CPA
11 received the wire transfer and when CPA made the media buys.⁸ Story says that Davis wanted
12 confirmation that CPA spent \$100,000 on Kinzinger's race.⁹ In an e-mail to Story on March 16,
13 2012, Davis, using his "volunteersforshimkus.org" address, asked for confirmation that CPA
14 spent "at least \$100,000 . . . on Rockford [Illinois] TV and any cable outlets you have added."¹⁰

⁵ John Stanton, *Eric Cantor Gave \$25K to Anti-Incumbent PAC to Aid Adam Kinzinger*, ROLL CALL, Apr. 6, 2012, available at http://www.rollcall.com/news/Eric_Cantor_Gave_Money_to_Super_PAC_to_Aid_Adam_Kinzinger-213651-1.html [hereinafter Stanton, *Cantor Gave \$25K*] (alteration in original).

⁶ Davis was elected in November 2012 to be the U.S. Representative from the 13th District in Illinois.

⁷ See CPA 2012 Amended April Monthly Report at 9 (July 23, 2012); OCE Mem. of Interview of CPA Managing Director (Jamie Story) ¶ 12, OCE Report Ex. 4 at 12-9525_0021 ("Story MOI"); OCE Mem. of Interview of CPA Development Coordinator (Hannah Christian) ¶ 26, OCE Report Ex. 6 at 12-9525_0028 ("Christian MOI"). The OCE Report usually refers to CPA's Managing Director and Development Coordinator by their positions rather than their names, but they are identified in each other's interviews. See Story MOI ¶¶ 2, 6; Christian MOI ¶¶ 2, 6.

⁸ Christian MOI ¶ 25.

⁹ See Story MOI ¶ 18.

¹⁰ E-mail from Rodney Davis to Jamie Story (Mar. 16, 2012 02:27 PM CDT), OCE Report Ex. 5 at 12-9525_024. The e-mail reads "Jamie, the \$25k echeck yesterday was rescinded, and the money was wired today from the 18th Congressional District PAC. That puts you at \$90,000 already wired. \$10,000 more may have been wired today from Canning, but I am not sure there. Have John get me a copy of the buy that shows at least \$100,000 being spent on Rockford TV and any cable outlets you have added. Thx." *Id.* CPA did not disclose the receipt of a contribution from "Canning," and Story says she did not have any knowledge of such an individual. See Story MOI ¶ 17. "John" appears to refer to CPA's "head Republican strategist" referenced in an e-mail from Story to Davis. E-mail from Jamie Story to Rodney Davis (Mar. 14, 2012 01:20 PM CDT), OCE Report Ex. 14 at 12-9525_0115.

1 CPA aired and distributed independent expenditure advertisements opposing Manzullo
2 totaling \$239,531.68, all during the period March 8-19, 2012. The only expenditures for
3 television advertising — in the amounts of \$15,000, \$25,000, and \$35,000 respectively — all
4 occurred on March 16 or 17, 2012, after the ERICPAC contribution.¹¹ CPA's television
5 advertisement is described in an e-mail from Rob Collins, Cantor's former Chief of Staff, as "the
6 ad that Shimkus, Schock and Cantor have sent money in to support that the Campaign for
7 Primary Accountability is running."¹²

8 The available information indicates that Schock, with knowledge of a \$25,000
9 commitment for a contribution to CPA from the 18th District Republican Central Committee
10 (Federal Account), reached out to Rep. Cantor to see if Rep. Cantor could raise additional funds
11 to support pro-Kinzinger ads by CPA. Schock was quoted in the press as stating to Cantor: "I
12 said, 'Look, I'm going to do \$25,000 [specifically] for the Kinzinger campaign for the television
13 campaign' and said, 'Can you match that?'" "And he said, 'Absolutely.'"¹³

14 ERICPAC contributed \$25,000 to CPA on March 16, 2012.¹⁴ Cantor's campaign
15 spokesman reportedly stated that Cantor made the donation at the request of Schock; his
16 description of the exchange was quoted in a news article as follows: "On Thursday, March 15,

¹¹ See CPA 2012 Amended April Monthly Report at 38; CPA 24/48 Hour Notice of Independent Expenditures (Mar. 19, 2012).

¹² E-mail from Rob Collins to Ted Burnes (Mar. 15, 2012 10:24 AM), OCE Report Ex. 23 at 12-9525_0140. Rob Collins is a partner with the political strategy firm Purple Strategies LLC, and Ted Burnes is Director of American College of Radiology PAC and Political Education, another contributor to CPA. See OCE Report at 10; OCE Mem. of Interview of Lobbyist Donor 1 (Ted Burnes) ¶¶ 2, 12, OCE Report Ex. 21 at 12-9525_0133.

¹³ See Stanton, *Cantor Gave \$25K*, *supra*. The bracketed term "[specifically]" appears in Schock's quote in the article. The article incorrectly reported that Schock's leadership PAC, GOP Generation Y Fund, contributed \$25,000 to CPA.

¹⁴ ERICPAC 2012 April Monthly Report at 74 (Apr. 20, 2012).

1 2012, Leader Cantor was asked by Congressman Schock to contribute to an organization that
2 was supporting Adam Kinzinger in the Illinois election of March 20. ERICPAC subsequently
3 made a contribution with the understanding that those funds would be used only in the effort to
4 support Congressman Kinzinger.”¹⁵

5 **C. Legal Analysis**

6 **1. Applicable Law**

7 The Act and Commission regulations prohibit federal candidates, federal officeholders,
8 agents acting on their behalf, and entities that are directly or indirectly established, financed,
9 maintained, controlled by, or acting on behalf of federal candidates or officeholders from
10 soliciting, receiving, directing, transferring, spending, or disbursing funds in connection with an
11 election for federal office, unless the funds are subject to the limitations, prohibitions, and
12 reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. §§ 300.60, 300.61.¹⁶

13 The Act limits contributions to non-authorized, non-party committees to \$5,000 in any
14 calendar year. 2 U.S.C. § 441a(a)(1)(C). The Act also prohibits any candidate or political
15 committee from knowingly accepting any contribution in violation of section 441a. *Id.*
16 § 441a(f).

¹⁵ Stanton, *Cantor Gave \$25K, supra*. Cantor described Schock's request in similar terms: Schock called Cantor and asked whether he would give \$25,000 to a super PAC operating in Illinois in connection with Kinzinger's race. See OCE Mem. of Interview of Cantor ¶ 8, OCE Report Ex. 8 at 12-9525_0087.

¹⁶ Agents of federal candidates and officeholders are prohibited from engaging in these activities when “acting on behalf of a Federal candidate or individual holding Federal office.” 11 C.F.R. § 300.60(c). The Commission has defined an “agent” of a federal candidate or officeholder to be “any person who has actual authority, either express or implied,” “to solicit, receive, direct, transfer, or spend funds in connection with any election.” *Id.* § 300.2(b)(3).

1 Following the decisions in *Citizens United v. FEC*¹⁷ and *SpeechNow.org v. FEC*,¹⁸ the
2 Commission concluded in Advisory Op. 2010-11 (Commonsense Ten) that individuals, political
3 committees, corporations, and labor organizations may make unlimited contributions to
4 independent expenditure-only political committees and that such committees may solicit
5 unlimited contributions from such persons. Thus, committees such as CPA that have registered
6 with the Commission may accept unlimited contributions from individuals, political committees,
7 corporations, and labor organizations.¹⁹

8 2. There Is No Reason to Believe Respondents Made an Excessive
9 Contribution
10

11 Political committees like CPA that make only independent expenditures, and do not make
12 any contributions,²⁰ may accept unlimited contributions from individuals and from other political
13 committees like ERICPAC. See AO 2010-11 (Commonsense Ten); *Citizens United v. FEC*;
14 *SpeechNow.org v. FEC*. Accordingly, ERICPAC, in making a \$25,000 contribution to CPA, has
15 not made an excessive contribution. Further, Cantor has not made an excessive contribution.
16 The Commission thus finds no reason to believe that ERICPAC or Cantor violated 2 U.S.C.
17 § 441a(a).

¹⁷ 558 U.S. 310 (2010).

¹⁸ 599 F.3d 686 (D.C. Cir. 2010).

¹⁹ See Letter from Jonathan Martin, CPA Treasurer, to FEC (Sept. 27, 2011) (notifying the Commission that CPA intends to make independent expenditures and will not use its funds to make contributions), available at <http://docquery.fec.gov/pdf/262/11030664262/11030664262.pdf>.

²⁰ CPA has not established a separate account for contributions subject to the limitations and prohibitions of the Act. See Stipulated Order and Consent Judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. Aug. 19, 2011); see also FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

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FEDERAL ELECTION COMMISSION

RESPONDENT: 18th District Republican Central Committee
(Federal Account) and Paul Kilgore in his
official capacity as treasurer

MUR 6733

FACTUAL AND LEGAL ANALYSIS

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission by Eva Jehle, alleging violations of the Federal Election Campaign Act of 1971, as amended, ("the Act") by Respondents.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

The Complaint alleges that the 18th District Republican Central Committee (Federal Account), a local party committee in the 18th Congressional District of Illinois, made a \$25,000 contribution solicited by Representative Aaron Schock (18th District, Illinois) and/or directed by Schock's staff, to an independent-expenditure-only political committee, Campaign for Primary Accountability Inc. ("CPA"), in violation of the Act.

The Complaint makes allegations based on an investigative report that the Office of Congressional Ethics ("OCE" and the "OCE Report") submitted to the House of Representatives Committee on Ethics ("House Ethics").¹

¹ See Compl. at 2, Attach. A (May 1, 2013); OCE Review No. 12-9525, adopted Aug. 24, 2012, *available at* <http://ethics.house.gov/sites/ethics.house.gov/files/OCE%20Report%20Rep.%20Schock.pdf>. On February 6, 2013, OCE publicly released its report that it referred to House Ethics on August 30, 2012. See FEBRUARY 6, 2013—OCE REFERRAL REGARDING REP. AARON SCHOCK, *available at* <http://oce.house.gov/2013/02/february-6-2013---oce-referral-regarding-rep-aaron-schock.html>.

1 The 18th District Committee responds that it made the decision to make a permissible
2 \$25,000 contribution to CPA, and that the Commission should dismiss the Complaint and find no
3 reason to believe the Committee violated the Act.²

4 Based on the available information, the Commission finds no reason to believe that the
5 18th District Committee made an excessive contribution. See 2 U.S.C. § 441a(a).

6 **B. Factual Summary**

7 Representatives Adam Kinzinger and Don Manzullo were candidates in the Illinois 16th
8 Congressional District primary election held on March 20, 2012. Information in the
9 Commission's possession indicates that Schock supported Kinzinger and sought to assist him.
10 Further information indicates that Schock learned that CPA was broadcasting advertisements
11 opposing Manzullo and believed that CPA needed additional funds to be able to air the
12 advertisements again prior to the election. Schock's first-person description of relevant events
13 was quoted in a press article:

14 "The final week of the campaign, it got very tight, it was neck and neck. I
15 was trying to do everything I could to help the Kinzinger campaign and
16 reached out to the committee that was running ads in support of them."

17
18 "They were basically running the television ads for him, [and] I asked if I
19 could specify a donation to them," to be used only in the Illinois primary.

20
21 "And they said I could."³
22
23

² 18th District Committee Resp. at 1 (June 27, 2013).

³ John Stanton, *Eric Cantor Gave \$25K to Anti-Incumbent PAC to Aid Adam Kinzinger*, ROLL CALL, Apr. 6, 2012, available at http://www.rollcall.com/news/Eric_Cantor_Gave_Money_to_Super_PAC_to_Aid_Adam_Kinzinger-213651-1.html (alteration in original).

1 CPA personnel state that Rodney Davis, then a staffer for Representative John Shimkus
2 (15th District, Illinois),⁴ was the contact person for the \$25,000 18th District Committee
3 contribution that CPA received on March 16, 2012, for the Kinzinger race.⁵ CPA Development
4 Coordinator Hannah Christian states that she contacted Davis to get the complete contact
5 information for the donors who made contributions by wire transfer and was supposed to let
6 Davis know when CPA received the wire transfer and when CPA made the media buys.⁶ Story
7 says that Davis wanted confirmation that CPA spent \$100,000 on Kinzinger's race.⁷ In an e-mail
8 to Story on March 16, 2012, Davis, using his "volunteersforshimkus.org" address, asked for
9 confirmation that CPA spent "at least \$100,000 . . . on Rockford [Illinois] TV and any cable
10 outlets you have added."⁸

11 CPA aired and distributed independent expenditure advertisements opposing Manzullo
12 totaling \$239,531.68, all during the period March 8-19, 2012. The only expenditures for
13 television advertising — in the amounts of \$15,000, \$25,000, and \$35,000 respectively — all

⁴ Davis was elected in November 2012 to be the U.S. Representative from the 13th District in Illinois.

⁵ See CPA 2012 Amended April Monthly Report at 9 (July 23, 2012); OCE Mem. of Interview of CPA Managing Director (Jamie Story) ¶ 12, OCE Report Ex. 4 at 12-9525_0021 ("Story MOI"); OCE Mem. of Interview of CPA Development Coordinator (Hannah Christian) ¶ 26, OCE Report Ex. 6 at 12-9525_0028 ("Christian MOI"). The OCE Report usually refers to CPA's Managing Director and Development Coordinator by their positions rather than their names, but they are identified in each other's interviews. See Story MOI ¶¶ 2, 6; Christian MOI ¶¶ 2, 6.

⁶ Christian MOI ¶ 25.

⁷ See Story MOI ¶ 18.

⁸ E-mail from Rodney Davis to Jamie Story (Mar. 16, 2012 02:27 PM CDT), OCE Report Ex. 5 at 12-9525_024. The e-mail reads "Jamie, the \$25k echeck yesterday was rescinded, and the money was wired today from the 18th Congressional District PAC. That puts you at \$90,000 already wired. \$10,000 more may have been wired today from Canning, but I am not sure there. Have John get me a copy of the buy that shows at least \$100,000 being spent on Rockford TV and any cable outlets you have added. Thx." *Id.* CPA did not disclose the receipt of a contribution from "Canning," and Story says she did not have any knowledge of such an individual. See Story MOI ¶ 17. "John" appears to refer to CPA's "head Republican strategist" referenced in an e-mail from Story to Davis. E-mail from Jamie Story to Rodney Davis (Mar. 14, 2012 01:20 PM CDT), OCE Report Ex. 14 at 12-9525_0115.

1 occurred on March 16 or 17, 2012, the day of or the day after the 18th District Committee
2 contribution.⁹ CPA's television advertisement is described in an e-mail as "the ad that [Rep.]
3 Shimkus, [Rep.] Schock and [Rep.] Cantor have sent money in to support that the Campaign for
4 Primary Accountability is running."¹⁰

5 The available information indicates that Schock's Campaign Director, Tania Hoerr, made
6 the contribution on the 18th District Committee account at the direction of Schock's Chief of
7 Staff, Steve Shearer.¹¹ Hoerr says that she:

- 8 • had the necessary banking information to make the online contribution because she
9 established the 18th District Committee account and routinely deposits money into its
10 account from Schock's joint fundraising committee, Schock Victory Committee
11 ("Victory Committee");¹²
- 12 • did not recall needing to get approval from anyone other than Shearer in order to make
13 the contribution, and did not recall speaking to 18th District Committee Chairman Mike
14 Bigger prior to making the contribution;¹³
- 15 • was not sure why Bigger did not make the contribution online himself;¹⁴
- 16
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⁹ See CPA 2012 Amended April Monthly Report at 38; CPA 24/48 Hour Notice of Independent Expenditures (Mar. 19, 2012).

¹⁰ E-mail from Rob Collins to Ted Burnes (Mar. 15, 2012 10:24 AM), OCE Report Ex. 23 at 12-9525_0140. Rob Collins is a partner with the political strategy firm Purple Strategies LLC, and Ted Burnes is Director of American College of Radiology PAC and Political Education, another contributor to CPA. See OCE Report at 10; OCE Mem. of Interview of Lobbyist Donor 1 (Ted Burnes) ¶¶ 2, 12, OCE Report Ex. 21 at 12-9525_0133.

¹¹ See OCE Mem. of Interview of Tania Hoerr ¶¶ 3, 10, OCE Report Ex. 11 at 12-9525_0100 ("Hoerr MOI"). The OCE Report generally refers to Hoerr and Shearer by position rather than name, but they are identified in the Memoranda of Interviews of other witnesses. See, e.g., Christian MOI ¶ 19; Hoerr MOI ¶ 6. Hoerr is Schock's sister. See OCE Report at 15 n.62.

¹² See Hoerr MOI ¶ 12. The Victory Committee amended its Statement of Organization on March 9, 2011, to add the 18th District Committee as a participating committee along with Schock for Congress (Schock's principal campaign committee), GOP Generation Y Fund (Schock's leadership PAC), and the National Republican Congressional Committee.

¹³ *Id.* ¶ 13.

¹⁴ *Id.* ¶ 15.

- did not speak to Schock at that time about the contribution and did not recall if Shearer told her if anyone requested that the contribution be made;¹⁵ and
- learned from CPA that it would take a significant amount of time to process the online contribution she made, and that Shearer contacted Bigger for him to make the contribution from the 18th District Committee via a wire transfer.¹⁶

The online contribution was duly rescinded and replaced by a wire transfer from the 18th District Committee.¹⁷ Davis informed CPA of the replacement by e-mail.¹⁸ Shearer says that Bigger contacted him to ask for the wire transfer information after Bigger and Schock had a conversation about eight or nine days prior to the Kinzinger primary election.¹⁹

C. Legal Analysis

1. Applicable Law

The Act and Commission regulations prohibit federal candidates, federal officeholders, agents acting on their behalf, and entities that are directly or indirectly established, financed, maintained, controlled by, or acting on behalf of federal candidates or officeholders from soliciting, receiving, directing, transferring, spending, or disbursing funds in connection with an election for federal office, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. §§ 300.60, 300.61.²⁰

¹⁵ *Id.* ¶ 14.

¹⁶ *Id.* ¶¶ 16-19. According to Story, Davis put her in contact with someone at the 18th District Committee who wired the contribution to CPA. See Story MOI ¶ 15.

¹⁷ See Hoerr MOI ¶ 19; Story MOI ¶¶ 14-15.

¹⁸ See Davis E-mail to Story, *supra*.

¹⁹ OCE Mem. of Interview of Steve Shearer ¶ 18, OCE Report Ex. 12 at 12-9525_0106.

²⁰ Agents of federal candidates and officeholders are prohibited from engaging in these activities when "acting on behalf of a Federal candidate or individual holding Federal office." 11 C.F.R. § 300.60(c). The Commission has defined an "agent" of a federal candidate or officeholder to be "any person who has actual

1 The Act limits contributions to non-authorized, non-party committees to \$5,000 in any
2 calendar year. 2 U.S.C. § 441a(a)(1)(C). The Act also prohibits any candidate or political
3 committee from knowingly accepting any contribution in violation of section 441a. *Id.*
4 § 441a(f).

5 Following the decisions in *Citizens United v. FEC*²¹ and *SpeechNow.org v. FEC*,²² the
6 Commission concluded in Advisory Op. 2010-11 (Commonsense Ten) that individuals, political
7 committees, corporations, and labor organizations may make unlimited contributions to
8 independent expenditure-only political committees and that such committees may solicit
9 unlimited contributions from such persons. Thus, committees such as CPA that have registered
10 with the Commission may accept unlimited contributions from individuals, political committees,
11 corporations, and labor organizations.²³

12 2. There Is No Reason to Believe Respondents Made an Excessive
13 Contribution
14

15 Political committees like CPA that make only independent expenditures, and do not make
16 any contributions,²⁴ may accept unlimited contributions from individuals and from other political
17 committees like the 18th District Committee. *See* AO 2010-11 (Commonsense Ten); *Citizens*

authority, either express or implied," "to solicit, receive, direct, transfer, or spend funds in connection with any election." *Id.* § 300.2(b)(3).

²¹ 558 U.S. 310 (2010).

²² 599 F.3d 686 (D.C. Cir. 2010).

²³ *See* Letter from Jonathan Martin, CPA Treasurer, to FEC (Sept. 27, 2011) (notifying the Commission that CPA intends to make independent expenditures and will not use its funds to make contributions), *available at* <http://docquery.fec.gov/pdf/262/11030664262/11030664262.pdf>.

²⁴ CPA has not established a separate account for contributions subject to the limitations and prohibitions of the Act. *See* Stipulated Order and Consent Judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C Aug. 19, 2011); *see also* FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

- 1 *United v. FEC; SpeechNow.org v. FEC*. Accordingly, the 18th District Committee, in making a
- 2 \$25,000 contribution to CPA, has not made an excessive contribution. The Commission thus
- 3 finds no reason to believe that the 18th District Committee violated 2 U.S.C. § 441a(a).

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FEDERAL ELECTION COMMISSION

RESPONDENT: Campaign for Primary Accountability Inc. MURs 6563 and 6733
and Jonathan Martin in his official capacity
as treasurer

FACTUAL AND LEGAL ANALYSIS

I. INTRODUCTION

These matters were generated by Complaints filed with the Federal Election Commission by the Campaign Legal Center and Democracy 21 in MUR 6563 and by Eva Jehle in MUR 6733, alleging violations of the Federal Election Campaign Act of 1971, as amended, ("the Act") by Respondents.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

The Complaints in MURs 6563 and 6733 allege that the Campaign for Primary Accountability Inc. ("CPA"), an independent-expenditure-only political committee, received contributions in violation of the Act.

The Complaint in MUR 6733 makes allegations based on an investigative report that the Office of Congressional Ethics ("OCE" and the "OCE Report") submitted to the House of Representatives Committee on Ethics ("House Ethics").¹

CPA responds that the Complaints do not allege any violations on its part, that CPA received lawful contributions, and that the Commission should take no further action against CPA and summarily dismiss it as a Respondent in this matter.²

¹ See Compl. at 2, Attach. A, MUR 6733 (May 1, 2013); OCE Review No. 12-9525, adopted Aug. 24, 2012, available at <http://ethics.house.gov/sites/ethics.house.gov/files/OCE%20Report%20Rep.%20Schock.pdf>. On February 6, 2013, OCE publicly released its report that it referred to House Ethics on August 30, 2012. See FEBRUARY 6, 2013—OCE REFERRAL REGARDING REP. AARON SCHOCK, available at <http://oce.house.gov/2013/02/february-6-2013---oce-referral-regarding-rep-aaron-schock.html>.

² CPA Resp. at 1-2 (May 22, 2012), MUR 6563; CPA Resp. at 1-2 (May 30, 2013), MUR 6733.

1 Based on the available information, the Commission finds no reason to believe that CPA
2 received an excessive contribution. *See* 2 U.S.C. §§ 441a(a), 441a(f).

3 **B. Factual Summary**

4 Representatives Adam Kinzinger and Don Manzullo were candidates in the Illinois 16th
5 Congressional District primary election held on March 20, 2012. Information in the
6 Commission's possession indicates that Representative Aaron Schock (18th District, Illinois)
7 supported Kinzinger and sought to assist him. Further information indicates that Schock learned
8 that CPA was broadcasting advertisements opposing Manzullo and believed that CPA needed
9 additional funds to be able to air the advertisements again prior to the election. Schock's first-
10 person description of relevant events was quoted in a press article:

11 "The final week of the campaign, it got very tight, it was neck and neck. I
12 was trying to do everything I could to help the Kinzinger campaign and
13 reached out to the committee that was running ads in support of them."

14
15 "They were basically running the television ads for him, [and] I asked if I
16 could specify a donation to them," to be used only in the Illinois primary.

17
18 "And they said I could."³
19

20 CPA personnel state that Rodney Davis, at the time a staffer for Representative John
21 Shimkus (15th District, Illinois),⁴ was the contact person for the following contributions that
22 CPA received for the Kinzinger race:⁵

³ John Stanton, *Eric Cantor Gave \$25K to Anti-Incumbent PAC to Aid Adam Kinzinger*, ROLL CALL, Apr. 6, 2012, available at http://www.rollcall.com/news/Eric_Cantor_Gave_Money_to_Super_PAC_to_Aid_Adam_Kinzinger-213651-1.html (alteration in original).

⁴ Davis was elected in November 2012 to be the U.S. Representative from the 13th District in Illinois.

⁵ *See* OCE Mem. of Interview of CPA Managing Director (Jamie Story) ¶ 12, OCE Report Ex. 4 at 12-9525_0021 ("Story MOI"); OCE Mem. of Interview of CPA Development Coordinator (Hannah Christian) ¶ 26, OCE Report Ex. 6 at 12-9525_0028 ("Christian MOI"). The OCE Report usually refers to CPA's Managing Director and Development Coordinator by their positions rather than their names, but they are identified in each other's interviews. *See* Story MOI ¶¶ 2, 6; Christian MOI ¶¶ 2, 6.

Contributor	Amount	Date Received ⁶
David Herro Trust	\$35,000.00	March 14, 2012
ERICPAC ⁷	\$25,000.00	March 15, 2012
18th District Committee	\$25,000.00	March 16, 2012
Anne Dias Griffin	\$30,000.00	March 16, 2012
American College of Radiology Assn PAC	\$5,000.00	March 22, 2012 ⁸
TOTAL	\$120,000.00	

CPA Managing Director Jamie Story states that in March 2012, CPA Co-Chairman Eric O'Keefe told her to call Davis because he knew of individuals who would contribute to CPA's efforts in Kinzinger's election.⁹ Story further states that she provided Davis with wiring instructions for contributions and that she did not ask Davis for contributions or a specific amount of money.¹⁰ CPA Development Coordinator Hannah Christian states that to her knowledge no one from CPA requested the contributions from these individuals and entities.¹¹ Christian also states that she contacted Davis to get the complete contact information for these donors who made contributions by wire transfer and was supposed to let Davis know when CPA

⁶ See CPA 2012 Amended April Monthly Report at 6, 8-10 (July 23, 2012).

⁷ Every Republican Is Crucial (ERICPAC) is the leadership PAC of Representative Eric Cantor, who is referred to in the OCE Report at "Representative 1." See OCE Mem. of Interview of Representative 1, Ex. 8 at 12-9525_0086.

⁸ The OCE Report contains information about this contribution but it is not the subject of any allegations in the Complaint and does not otherwise appear to be the subject of any violations of the Act. See OCE Mem. of Interview of Lobbyist Donor 1 (Ted Burnes), OCE Report Ex. 21 at 12-9525_0133 ("Burnes MOI").

⁹ See Story MOI ¶¶ 5, 12.

¹⁰ *Id.* ¶¶ 12-13.

¹¹ See Christian MOI ¶ 26.

1 received the wire transfer and when CPA made the media buys.¹² Story says that Davis wanted
2 confirmation that CPA spent \$100,000 on Kinzinger's race.¹³ In an e-mail to Story on March 16,
3 2012, Davis, using his "volunteersforshimkus.org" address, asked for confirmation that CPA
4 spent "at least \$100,000 . . . on Rockford [Illinois] TV and any cable outlets you have added."¹⁴

5 CPA aired and distributed independent expenditure advertisements opposing Manzullo
6 totaling \$239,531.68, all during the period March 8-19, 2012. The only expenditures for
7 television advertising — in the amounts of \$15,000, \$25,000, and \$35,000 respectively — all
8 occurred on March 16 or 17, 2012, after or on the same day as the contributions at issue in this
9 matter.¹⁵ CPA's television advertisement is described in an e-mail from Rob Collins, Cantor's
10 former Chief of Staff, as "the ad that Shimkus, Schock and Cantor have sent money in to support
11 that the Campaign for Primary Accountability is running."¹⁶

¹² *Id.* ¶ 25.

¹³ *See* Story MOI ¶ 18.

¹⁴ E-mail from Rodney Davis to Jamie Story (Mar. 16, 2012 02:27 PM CDT), OCE Report Ex. 5 at 12-9525_024 ("Davis E-mail to Story"). The e-mail reads "Jamie, the \$25k echeck yesterday was rescinded, and the money was wired today from the 18th Congressional District PAC. That puts you at \$90,000 already wired. \$10,000 more may have been wired today from Canning, but I am not sure there. Have John get me a copy of the buy that shows at least \$100,000 being spent on Rockford TV and any cable outlets you have added. Thx." *Id.* CPA did not disclose the receipt of a contribution from "Canning," and Story says she did not have any knowledge of such an individual. *See* Story MOI ¶ 17. "John" appears to refer to CPA's "head Republican strategist" referenced in an e-mail from Story to Davis. E-mail from Jamie Story to Rodney Davis (Mar. 14, 2012 01:20 PM CDT), OCE Report Ex. 14 at 12-9525_0115.

¹⁵ *See* CPA 2012 Amended April Monthly Report at 38; CPA 24/48 Hour Notice of Independent Expenditures (Mar. 19, 2012). CPA also disclosed an \$18,000 independent expenditure on the same date, March 17, 2012, to the same vendor for a radio advertisement, the only radio communication among CPA's independent expenditures opposing Manzullo. *See id.* at 39.

¹⁶ E-mail from Rob Collins to Ted Burnes (Mar. 15, 2012 10:24 AM), OCE Report Ex. 23 at 12-9525_0140. Rob Collins is a partner with the political strategy firm Purple Strategies LLC, and Ted Burnes is Director of American College of Radiology PAC and Political Education. *See* OCE Report at 10; Burnes MOI ¶¶ 2, 12.

1 As to the 18th District Committee contribution, the available information indicates that
2 Schock's Campaign Director, Tania Hoerr, made the contribution on the 18th District Committee
3 account at the direction of Schock's Chief of Staff, Steve Shearer.¹⁷ Hoerr says that she:

- 4 • had the necessary banking information to make the online contribution because she
5 established the 18th District Committee account and routinely deposits money into its
6 account from Schock's joint fundraising committee, Schock Victory Committee
7 ("Victory Committee");¹⁸
8
- 9 • did not recall needing to get approval from anyone other than Shearer in order to make
10 the contribution, and did not recall speaking to 18th District Committee Chairman Mike
11 Bigger prior to making the contribution;¹⁹
12
- 13 • was not sure why Bigger did not make the contribution online himself;²⁰
14
- 15 • did not speak to Schock at that time about the contribution and did not recall if Shearer
16 told her if anyone requested that the contribution be made;²¹ and
17

¹⁷ See OCE Mem. of Interview of Tania Hoerr ¶¶ 3, 10, OCE Report Ex. 11 at 12-9525_0100 ("Hoerr MOI"). The OCE Report generally refers to Hoerr and Shearer by position rather than name, but they are identified in the Memoranda of Interviews of other witnesses. See, e.g., Christian MOI ¶ 19; Hoerr MOI ¶ 6. Hoerr is Schock's sister. See OCE Report at 15 n.62.

¹⁸ See Hoerr MOI ¶ 12. The Victory Committee amended its Statement of Organization on March 9, 2011, to add the 18th District Committee as a participating committee along with Schock for Congress (Schock's principal campaign committee), GOP Generation Y Fund (Schock's leadership PAC), and the National Republican Congressional Committee.

¹⁹ *Id.* ¶ 13.

²⁰ *Id.* ¶ 15.

²¹ *Id.* ¶ 14.

- 1 • learned from CPA that it would take a significant amount of time to process the online
2 contribution she made, and that Shearer contacted Bigger for him to make the
3 contribution from the 18th District Committee via a wire transfer.²²
4

5 The online contribution was duly rescinded and replaced by a wire transfer from the 18th
6 District Committee.²³ Davis informed CPA of the replacement by e-mail.²⁴ Shearer says that
7 Bigger contacted him to ask for the wire transfer information after Bigger and Schock had a
8 conversation about eight or nine days prior to the Kinzinger primary election.²⁵

9 The available information indicates that Schock, with knowledge of the \$25,000
10 commitment from the 18th District Committee, reached out to Rep. Cantor to see if Rep. Cantor
11 could raise additional funds to support pro-Kinzinger ads by CPA. Schock was quoted in the
12 press as stating to Cantor: "I said, 'Look, I'm going to do \$25,000 [specifically] for the
13 Kinzinger campaign for the television campaign' and said, 'Can you match that?'" "And he
14 said, 'Absolutely.'"²⁶

15 ERICPAC contributed \$25,000 to CPA on March 16, 2012.²⁷ Cantor's campaign
16 spokesman reportedly stated that Cantor made the donation at the request of Schock; his
17 description of the exchange was quoted in a news article as follows: "On Thursday, March 15,
18 2012, Leader Cantor was asked by Congressman Schock to contribute to an organization that

²² *Id.* ¶¶ 16-19. According to Story, Davis put her in contact with someone at the 18th District Committee who wired the contribution to CPA. See Story MOI ¶ 15.

²³ See Hoerr MOI ¶ 19; Story MOI ¶¶ 14-15.

²⁴ See Davis E-mail to Story, *supra*.

²⁵ OCE Mem. of Interview of Steve Shearer ¶ 18, OCE Report Ex. 12 at 12-9525_0106 ("Shearer MOI").

²⁶ See Stanton, *Cantor Gave \$25K, supra* (alteration in original). The bracketed term "[specifically]" appears in Schock's quote in the article. The article incorrectly reported that Schock's leadership PAC, GOP Generation Y Fund, contributed \$25,000 to CPA.

²⁷ ERICPAC 2012 April Monthly Report at 74 (Apr. 20, 2012).

1 was supporting Adam Kinzinger in the Illinois election of March 20. ERICPAC subsequently
2 made a contribution with the understanding that those funds would be used only in the effort to
3 support Congressman Kinzinger.”²⁸

4 As to David Herro’s \$35,000 contribution to CPA, Herro and Schock each say that
5 Schock contacted Herro and told him that Kinzinger’s election was close and asked Herro if he
6 could help but did not suggest any amount.²⁹ Herro told Schock that he would help and that he
7 would attempt to have others help.³⁰ Herro contributed \$35,000 to CPA on March 14, 2012,
8 after receiving information regarding CPA from Shearer, Schock’s Chief of Staff,³¹ and from
9 CPA, including that CPA wanted to raise \$100,000 in three days.³² Herro says he solicited three
10 individuals to contribute to CPA, one of whom, Anne Dias Griffin, contributed \$30,000 to CPA
11 on March 16, 2012.³³

12 C. Legal Analysis

13 1. Applicable Law

14 The Act and Commission regulations prohibit federal candidates, federal officeholders,
15 agents acting on their behalf, and entities that are directly or indirectly established, financed,

²⁸ Stanton, *Cantor Gave \$25K*, *supra*.

²⁹ See OCE Mem. of Interview of Schock ¶¶ 28-30, OCE Report, Ex. 9 at 12-9525_0092 (“Schock MOI”); OCE Mem. of Interview of David Herro ¶¶ 9, 11, OCE Report Ex. 18 at 12-9525_0125 (“Herro MOI”). The OCE Report refers to Herro as “Donor 1.”

³⁰ See Herro MOI ¶ 10; Schock MOI ¶¶ 30-31.

³¹ Shearer says that he provided CPA’s wire transfer information to Herro at Schock’s request. See Shearer MOI ¶¶ 23, 25-26.

³² See Herro MOI ¶¶ 12-16. The David Herro Trust (the “Trust”) made the \$35,000 contribution to CPA. See CPA 2012 Amended April Monthly Report at 8. Herro explained that the Trust is his bank account and he is the sole member of the Trust. See Herro MOI ¶ 18.

³³ See *id.* ¶ 17; OCE Mem. of Interview of Anne Dias Griffin ¶¶ 7-8, OCE Report Ex. 20, 12-9525_0131; CPA 2012 Amended April Monthly Report at 10. The OCE Report refers to Griffin as “Donor 2.”

1 maintained, controlled by, or acting on behalf of federal candidates or officeholders from
2 soliciting, receiving, directing, transferring, spending, or disbursing funds in connection with an
3 election for federal office, unless the funds are subject to the limitations, prohibitions, and
4 reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. §§ 300.60, 300.61.³⁶

5 The Act limits contributions to non-authorized, non-party committees to \$5,000 in any
6 calendar year. 2 U.S.C. § 441a(a)(1)(C). The Act also prohibits any candidate or political
7 committee from knowingly accepting any contribution in violation of section 441a. *Id.*
8 § 441a(f).

9 Following the decisions in *Citizens United v. FEC*³⁷ and *SpeechNow.org v. FEC*,³⁸ the
10 Commission concluded in Advisory Op. 2010-11 (Commonsense Ten) that individuals, political
11 committees, corporations, and labor organizations may make unlimited contributions to
12 independent expenditure-only political committees and that such committees may solicit
13 unlimited contributions from such persons. Thus, committees such as CPA that have registered
14 with the Commission may accept unlimited contributions from individuals, political committees,
15 corporations, and labor organizations.³⁹

³⁶ Agents of federal candidates and officeholders are prohibited from engaging in these activities when "acting on behalf of a Federal candidate or individual holding Federal office." 11 C.F.R. § 300.60(c). The Commission has defined an "agent" of a federal candidate or officeholder to be "any person who has actual authority, either express or implied," "to solicit, receive, direct, transfer, or spend funds in connection with any election." *Id.* § 300.2(b)(3).

³⁷ 558 U.S. 310 (2010).

³⁸ 599 F.3d 686 (D.C. Cir. 2010).

³⁹ See Letter from Jonathan Martin, CPA Treasurer, to FEC (Sept. 27, 2011) (notifying the Commission that CPA intends to make independent expenditures and will not use its funds to make contributions), available at <http://docquery.fec.gov/pdf/262/11030664262/11030664262.pdf>.

2. There Is No Reason to Believe Respondents Accepted Excessive Contributions

Political committees like CPA that make only independent expenditures, and do not make any contributions,⁴⁰ may accept unlimited contributions from individuals and from other political committees like ERICPAC and the 18th District Committee. *See* AO 2010-11 (Commonsense Ten); *Citizens United v. FEC*; *SpeechNow.org v. FEC*. Accordingly, CPA, in accepting contributions in amounts of \$25,000 and greater in this matter, has not received an excessive contribution. The Commission thus finds no reason to believe that CPA violated 2 U.S.C. § 441a(f).

⁴⁰ CPA has not established a separate account for contributions subject to the limitations and prohibitions of the Act. *See* Stipulated Order and Consent Judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C Aug. 19, 2011); *see also* FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.